Volume 2

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) **NO. 3:18-CR-00577-CRB**
MICHAEL RICHARD LYNCH and)
STEPHEN KEITH CHAMBERLAIN,)
Defendants.)

San Francisco, California
Monday, March 18, 2024

TRIAL TRANSCRIPT OF PROCEEDINGS

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I N D E X

Monday, March 18, 2024 - Volume 2

E X H I B I T S

Monday - March 18, 2024 **9:00 a.m.**

P R O C E E D I N G S

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(Proceedings were heard out of presence of the jury:)

THE COURT: Let the record reflect the parties are present. The jury is not present.

I received a request from counsel to address the Court before we started.

So, address the Court.

MR. HEBERLIG: Good morning, Your Honor. Thank you.

There are two witnesses: One issue with one, who is the first witness, and two issues with the second. The second is not likely to be on the stand today, so it's up to you if you'd like to hear about it now or later.

THE COURT: Later.

MR. HEBERLIG: Okay. First witness, it's one statement or vignette that is from his 302s. Perhaps I should have the Government make a proffer of what he would have to say.

The essence of it, as I understand it, is he will attribute to a different employee, a man named Joel Scott, not a co-conspirator, a statement to the effect of: The San Francisco Office of Autonomy was bugged with spyware, and they could read, see, hear everything --

THE COURT: Well, maybe I should hear from the

Government.

Go ahead.

MR. LEACH: Thank you, Your Honor. Robert Leach for the United States.

The first witness is Ganesh Vaidyanathan.

THE COURT: Is who?

MR. LEACH: Ganesh Vaidyanathan. It's a difficult name to pronounce.

THE COURT: Got it. Right. I mean, actually, I don't have it, but that's okay.

MR. LEACH: He worked in Autonomy Finance in the United States.

THE COURT: Yes.

MR. LEACH: I anticipate he will say that there came occasion in June of 2010, after Brent Hogenson was fired, where he had a conversation with Joel Scott, the general counsel in the United States, who is an agent of Dr. Lynch. And Mr. Scott said at one point that: We monitor your emails and we, you know, we know what's going on here in the United States.

The Government is not offering this for the truth. We're not contending that emails were actually bugged, but I do think it's probative of the control that Dr. Lynch exercised over the U.K. operation and on some level the fear and intimidation he injected into operations into the United States.

That's the proffer.

THE COURT: So he's going to say -- he's going to say that: I had a conversation with the general counsel of Autonomy, the U.K. general counsel. I mean, I don't know --

No, just general counsel?

MR. HEBERLIG: The U.S.

MR. LEACH: The U.S. General Counsel.

THE COURT: Oh, I had a conversation with the United States general counsel. This conversation --

When did it allegedly take place?

MR. LEACH: June 2010 during the conspiracy that's alleged, and shortly after, Brent Hogenson, one of the whistleblowers was fired.

THE COURT: Okay. And he says I -- I, the general counsel, know what you've done or I'm monitoring what you do.

So my question is how is that related to the transactions which are at issue here?

MR. LEACH: It's related in the sense that it -- A, it shows the control that the U.K. has over the United States; B, it shows, frankly, the intimidation that Dr. Lynch is imposing on employees at Autonomy, particularly after the Hogenson affair.

I wouldn't say it goes to one particular transaction, but it -- you know, I anticipate in the opening, because we heard in the voir dire, that Dr. Lynch is going to tout, you know, Autonomy surveillance activities, vis-a-vis terrorists.

THE COURT: No, no, I don't think we're going to get into that. I mean, maybe we are. I haven't heard an offer of proof. The first time I've heard about that was during the voir dire, and I think I reacted to that, but I don't know.

If the statement is elicited to try to respond to that statement, I don't want to -- it's not, you know, tit for tat, that's not the way the case goes, so I don't know. But I'm trying to figure out -- It's at a point where, as I understand the theory of the Government's case -- well, basically, the theory of the Government's case is that there was concealment, that they concealed the true state of affairs of Autonomy.

So here is a statement which suggests to an employee of Autonomy we know -- we're watching you, we know what you're doing. I don't know, that's somewhat attenuated, but I have to give some more thought to it.

Do you want -- you haven't said anything, so -- you have, but you haven't, but go ahead.

MR. HEBERLIG: Yeah, so, let me put aside for a second the relevance and 403 issues, because they're substantial. But fundamentally, it's a hearsay statement that's not covered by an exception. He's not a co-conspirator, and this notion that he's an agent of Dr. Lynch and the statement was in furtherance of his employment --

THE COURT: I don't think it's offered for the truth of the matter. In other words, I think what is being said here

is that statement by the general counsel to this person will have the effect on that person of affecting that person's state of mind; that, gee, I ought not to say anything about what's really going on here because they're watching me.

It's not hearsay. I don't think it's hearsay. They may or may not be watching him. So that's the truth of the matter.

MR. HEBERLIG: I think the truth is demonstrably untrue because they're not watching him.

THE COURT: That's fine, but it's not being offered for the truth of the matter.

MR. HEBERLIG: Okay. Then, so then 403 --

THE COURT: Therefore, it's not hearsay. What I'm saying is it's not hearsay.

MR. HEBERLIG: Okay. I hear you. But in terms of relevance and prejudice, it has nothing to do --

THE COURT: Well, that's the question.

MR. HEBERLIG: -- nothing to do with the charges we're talking about. Very far removed from Dr. Lynch.

First of all, Joel Scott is their witness who will not repeat that he said this, to my understanding.

So they're going to call this witness. He's a government-sponsored witness, who I don't believe will support the statement in any respect. So the Government will be offering something it knows is not true factually and that its own witness won't support. It's just a far stretch.

THE COURT: I'm going to think about it for a bit.

MR. LEACH: Thank you, Your Honor.

THE COURT: But we've got a full day ahead.

Yes?

MR. LINCENBERG: 10-second point. Recall that with regard to Deloitte, we have a subpoena for them to appear March 18th. We tried to get an on-call agreement. Their lawyers refused to sign it unless they get to control or have a say in what he testifies --

THE COURT: Who are the lawyers who are refusing to sign?

MR. LINCENBERG: It's Jim Farrell. I think he's at Latham right now.

THE COURT: Latham?

MR. LINCENBERG: Yeah. So, you know, look, government --

THE COURT: That's one of those boutique firms?

(Laughter)

MR. LINCENBERG: Yeah, one of those little guys.

THE COURT: Yeah, right, I got that. Yeah, okay.

MR. LINCENBERG: We tried to gobble them up, and they didn't...

Now, look, Mr. Reeves has been very helpful in helping to arrange and get a commitment that these Deloitte witnesses will appear.

I have a subpoena for March 18th --

THE COURT: Are they here?

MR. LINCENBERG: They're not here. And I've had, in the last 40 years, an example where a judge, when I said, well, we're now in the defense case, and he said, well, you've subpoenaed him for March 18th, you should have enforced it at that point.

I'm not looking to have these guys fly in from the U.K. today, but I need to have secure that they're under court order then to appear when we want --

THE COURT: Okay. Where is Mr. Latham or Mr. Watkins, where are they?

MR. LINCENBERG: Is he in Los Angeles?

MR. REEVES: Your Honor, I can respond to this.

THE COURT: Yes, Mr. Reeves.

MR. REEVES: Good morning, Your Honor.

THE COURT: Good morning.

MR. REEVES: I've had a --

THE COURT: Speak in the microphone, Mr. Reeves, so the --

MR. REEVES: Thank you very much, Your Honor.

I've had a running dialogue for nearly two months about this issue with Mr. Lincenberg and with Mr. Jim Farrell, who is at the Gibson, Dunn firm --

THE COURT: It's not Latham?

MR. LINCENBERG: He was with Latham.

MR. REEVES: All of the subpoenas--

THE COURT: Another boutique firm.

(Laughter)

MR. REEVES: Another boutique, Your Honor, yes, that's correct.

All of the witnesses from Deloitte that Mr. Lincenberg is talking about are currently under subpoena by the United States at the request of the defendant.

THE COURT: Okay. So here's the deal. Don't release them. Don't release them. Tell them they're still under subpoena. Even if you're not going to call them, tell them they're still under subpoena, and I'll deal with it.

MR. REEVES: Thank you, Your Honor.

THE COURT: Okay. And if Gibson or Dunn or Crutcher, or any of those people have a problem, have them come in and we'll talk about it.

MR. REEVES: There will be no problem. Thank you, your Honor.

MR. LINCENBERG: Thank you, Your Honor.

THE COURT: Yes. Yes. Good morning, Mr. Weingarten.

MR. WEINGARTEN: So I'd like to respond to the point about Mr. Lynch's relationship with the intelligence community. I did raise it during voir dire --

THE COURT: Yes, you did.

MR. WEINGARTEN: -- and it was my intention to talk about it in opening for the following reason. Mr. Lynch had a 30-year relationship with MI5, doing incredible work for them with his software. And the relevant point is some of the work, some of the important work was in 2011 during the alleged conspiracy. And on top of that, some of his purchases that are being challenged in the United States relate directly to his effort to converge his relationship with British intelligence to American intelligence.

THE COURT: Okay. So it's going to be brought up in the opening. So what's -- I did note -- I'm not convinced of the relevance of it, but why is it relevant? Because he's doing work -- I mean, that he's -- I don't see why it's relevant. It was relevant if maybe they didn't -- these were government contracts or they didn't pay on time or that they were better than other kinds of contracts and, therefore, they were entitled on an accounting basis to entertain it as a different kind of receivable or something like that.

But the work that they were doing I don't think -- number one, I'm not sure it's relevant, and number two, it does have a certain amount of prejudicial effect, because the jury then views this, well, all right, this person is doing work for, you know, the United States Government or world peace or elimination of terrorism.

Now, I think I don't want you to mention it in your

opening. I will give some further consideration as to whether or not it should come in. But it seems to me it's -- it has no demonstrable probative value that I could see.

MR. WEINGARTEN: Well, if I may. There's the ATIC purchase for $9 million that's right in the middle of -- it's a hundred percent related to the intelligence community.

THE COURT: Mr. Weingarten, if I change my mind, and I'm capable of changing my mind, as you can see, I will allow it when you get to that purchase in a discussion of that purchase, but not in the opening statement.

I understand you may want to put it in the opening statement. I'm instructing you not to put it in the opening statement, and then we will deal with it when we have discussions about that particular purchase from a witness who is going to testify about that particular purchase.

That's the ruling.

All right. So is everybody here?

THE CLERK: I need to go check.

THE COURT: Okay. Mr. Reeves, before you start I'm going to instruct the jury.

MR. REEVES: Thank you, Your Honor.

(Pause in the proceedings.)

MR. HEBERLIG: Your Honor, can we address an issue while we're waiting?

THE COURT: Of course.

MR. HEBERLIG: The Government just handed over its opening slides for the first time, and they are replete with summary charts that we don't believe are likely to be admissible. They're not factual evidence. They include things like real revenue versus actual revenue, the types of things that would be appropriate for closing after the evidence comes in, but there's going to be a real challenge about whether that in fact is the evidence.

And I've only gotten through half of them, because we literally got them 30 seconds ago. But they're not -- the types of slides you see in opening are documents that will be admitted in evidence. These are pedagogical --

THE COURT: I've seen everything in an opening, I guarantee you. I bet you have, too.

But, no, I accept what you're saying. I understand what you're saying.

Okay. Mr. Reeves, go ahead.

MR. REEVES: Your Honor, again, this is not evidence. Many of these summaries are demonstratives that we anticipate using in some form during the trial, and this is a full articulation of the evidence the Government intends to prove in this case.

THE COURT: Okay. I'm going to allow it. I'm going to allow it.

(Pause in proceedings.)

(Proceedings were heard in the presence of the jury:)

THE COURT: Please be seated.

Ms. Scott, will you call the case.

THE CLERK: Yes. Calling criminal action CR-18-0577, USA versus Michael Richard Lynch and Steven Keith Chamberlain.

Counsel, please state your appearances for the record.

MR. REEVES: Adam Reeves, Robert Leach, Kristina Green, Zach Abrahamson for the United States.

Good morning, Your Honor.

THE COURT: Good morning.

MR. WEINGARTEN: Good morning, Your Honor. Reid Weingarten, Brian Heberlig, and Chris Morvillo at counsel table for Dr. Lynch.

THE COURT: I think the court reporter had a hard time hearing.

MR. WEINGARTEN: Okay. I apologize.

At counsel table, Brian Heberlig, Chris Morvillo, and Reid Weingarten with Dr. Lynch.

THE COURT: Okay. Good morning.

MR. LINCENBERG: Good morning, Your Honor. Gary Lincenberg on behalf of Steve Chamberlain, who is present seated beside me.

THE COURT: All right. Good morning. Have a seat.

Good morning, ladies and gentlemen of the jury. Thank you. Thank you for being prompt.

We are about to start the trial. Before we do so, I would like to give you, in addition to the instruction that I gave you last Thursday night on your departure, a few additional instructions that I think will be of use to you in the course of the trial.

JURY INSTRUCTIONS

THE COURT: These are called Preliminary Instructions. At the end of the trial I will give you detailed written instructions, and, as I indicated, each of you will get a package of instructions. They'll be written out. You'll have your own package and so you won't have to laboriously take notes of any instruction that I give you, because it will be in written form.

When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in the case, and in that process to decide the facts. To the facts as you find them you will apply the law as I give it to you, whether you agree with the law or not.

You must decide the case solely on the evidence and the law before you. Perform these duties fairly and impartially. You should not be influenced by any person's race, color, religious beliefs, national ancestry, sexual orientation, gender identity, gender or economic circumstances.

Also, do not allow yourself to be influenced by personal

likes or dislikes, sympathy, prejudice, fear, public opinion or biases, including unconscious biases. Unconscious biases are stereotypes, attitudes or preferences that people may consciously reject but may be expressed without conscious awareness, control or intention. Like conscious bias, unconscious bias can affect how we evaluate information and make decisions.

Now, as you know, this is a criminal case brought by the United States Government. The Government charges these two defendants with a number of specific offenses.

The charges against the defendants are contained in an indictment. The indictment simply describes the charges the Government brings against a defendant. The indictment is not evidence and does not prove anything.

The defendants have pled "Not Guilty" to the charges, and are presumed to be innocent unless and until the Government proves a defendant guilty beyond a reasonable doubt.

In addition, the defendant, each defendant has the right to remain silent and never has to prove innocence or present any evidence.

The evidence you are to consider in deciding what the facts are consists of:

First, the sworn testimony of any witness; and

Second, the exhibits that are received in evidence; and

Third, any facts to which the parties agree.

The following things are not evidence, and you must not consider them as evidence in deciding the facts of the case:

First, arguments and statements of the attorneys;

Second, questions and objections of the attorneys;

Third, testimony that I instruct you to disregard, even if you see or hear something when the Court is not in session, even if it's done by one of the parties or by one of the witnesses.

Evidence may be direct or circumstantial. You are to consider both direct and circumstantial evidence. Either can be used to prove a fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

There are rules of evidence that control what can be received in evidence. When a lawyer asks a question or offers an exhibit in evidence and a lawyer on the other side thinks it's not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered or the exhibit cannot be received.

Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says or part of it or none of it.

In considering the testimony of any witness, you may take into account:

First, the witness's opportunity and ability to see or hear or know the things testified to;

Second, the witness's memory;

Third, the witness's manner while testifying;

Fourth, the witness's interest in the outcome of the case, if any;

Fifth, the witness's bias or prejudice, if any;

Sixth, whether other evidence contradicted the witness's testimony;

Seventh, the reasonableness of the witness's testimony in light of all the other evidence; and

Eight, any other factors that bear on believability.

You must avoid bias, conscious or unconscious, based on a witness's race, color, religious beliefs, national ancestry, sexual orientation, gender identity, gender or economic

circumstances in your determination of credibility.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it. What is important is how believable the witnesses are and how much weight you think their testimony deserves.

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note taking distract you from being attentive.

When you leave the courtroom for recesses, your notes should be left in the courtroom or in the jury room. No one will read your notes. Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

The next phase of this trial will now begin. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what the party expects the evidence will show. A party is not required to make an opening statement.

And let me emphasize, during the course of this opening statement, you may see charts or graphs or compilation of figures. That's not evidence. It is what a party believes the evidence will ultimately show in the case.

The counts -- the Government will then present after opening statements evidence, and the counsel for defendants may cross-examine. Then, if defendants choose to offer evidence, counsel for the Government may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to this case and the attorneys will make closing arguments.

After that you will go to the jury room to deliberate on your verdict.

So with that, we will start with the Government's opening statement.

Mr. Reeves.

MR. REEVES: Thank you, Your Honor.

OPENING STATEMENT

MR. REEVES: May it please the Court, Ladies and Gentlemen of the Jury, in early 2011, Mike Lynch, then the CEO of Autonomy, a software company with headquarters in San Francisco and the United Kingdom, met with executives of the Hewlett Packard company at their headquarters in Palo Alto, and he spun a fabulous tale of corporate success. The evidence in this case will prove that this was the scene of an $11 billion fraud.

Using Autonomy's recently-filed 2010 Annual Report, which the co-defendant Steven Chamberlain helped prepare, Dr. Lynch regaled HP with Autonomy's, quote, record revenues of

approximately $870 million.

Critically, Dr. Lynch emphasized that Autonomy's success was attributable to, quote, organic growth in its core business product IDOL. IDOL, you will learn, was software that helped companies search what's called unstructured data.

Unstructured data is data like emails, Word documents and videos that are not organized in a database. If, as Dr. Lynch portrayed, Autonomy was growing organically because of the market demand for IDOL, then the company's market value was enormous, potentially worth billions and billions.

This was music to HP's ears. HP, one of Silicon Valley's most storied tech companies, was trying to transition from a successful hardware seller into the lucrative world of software sales. You will learn that it costs a lot to make a computer with all of its components and chips. The amount of profit or margin you can make on the sale of each computer is limited, a few percentage points at best.

By contrast, with software, most of the costs are upfront. Once the product is ready, it costs next to nothing to make each additional software increment. The amount of profit or margin you can make on software approaches 90 percent.

And that is the story Mike Lynch pressed on HP. He led them to believe Autonomy was growing organically through demand for a product that had extraordinarily high margins, a money-making machine, and HP ate it up. They thought this kind

of pure software company was exactly what they needed. And in August 2011, HP agreed to pay over $11 billion to acquire Autonomy.

And in October 2011 when the deal closed, Steve Chamberlain made about 2.5 million pounds, and Mike Lynch walked away with about 500 million pounds.

Mike Lynch and Steve Chamberlain had only one problem. Autonomy's financial statements were materially false and misleading. Autonomy's story of success was in fact an elaborate multi-layered, multi-year fraud.

In early 2009, in the wake of the financial crisis, Autonomy's growth was slowing. Deals were slowing, and those that happened took longer. It was becoming harder and harder to meet market expectations and maintain the growth trajectory that made Autonomy so attractive to investors.

In early 2009, the defendants had a choice, except that Autonomy was no different from the rest of the tech sector, and that growth was slowing or cheat.

The evidence will show they started to use a variety of accounting tricks to make Autonomy's revenue growth look better than it really was. They backdated contracts to bring revenue into the quarter. They pretended Autonomy had shipped goods it had not really shipped. And with increasing frequency, Autonomy started to buy its own revenue from third parties like value-added resellers in roundtrip or so-called barter deals.

Autonomy purchased products and services it did not need or use at inflated prices so these resellers and partners could then buy Autonomy's products for less money. You will learn that these deals made no sense, unless you were trying to falsely inflate your revenue.

To carry out this fraud, the defendants had to lie to Autonomy's auditors, and they did that again and again over 10 quarters. You will learn that the job of misleading the auditors fell principally to Steve Chamberlain and his boss Sushovan Hussain, Autonomy's Chief Financial Officer.

Mike Lynch had a different job. His job was to persuade the market that Autonomy was a, quote, pure software company, when in fact it wasn't. Mike Lynch knew that Autonomy was reselling millions and millions of dollars of computer hardware at a loss. Autonomy was selling monitors, computer mice and laptops with no Autonomy software on them.

In 2010, hardware resold at a loss made up about approximately 100 million or over 10 percent of Autonomy's total revenue. Why would Dr. Lynch do that? Answer: To inflate the total revenue and make the company look like it was growing faster than it really was.

And Mike Lynch was very good at his job. You will learn that he was a dominating, controlling, intimidating boss. For many years he ran Autonomy with an iron fist. He beguiled the London stock market and the aspiring British tech sector into

cheering his every move, and the evidence will show that he was the driving force behind this massive fraud.

To understand how the sophisticated fraud was possible, you first need to understand a little bit more about Autonomy. Autonomy was a public company traded on the London stock market. You will hear that Autonomy had investors all over the world, including many here in the United States.

In 2009, Autonomy's fraudulent revenue claims pushed its stock to nearly 20 pounds. That kind of growth motivated HP to pay a premium to acquire the company in 2011, which is why you see the price shoot up to about 25 pounds.

Here is the location of Autonomy's executive offices in London, in St. James Square near Buckingham Palace. This is where Dr. Lynch and Sushovan Hussain principally worked.

This is a picture of the Cambridge office where Mr. Chamberlain and the finance department worked. Cambridge is only a short train ride north of London. This is also where the auditors did most of their work on site at Autonomy.

And here is the San Francisco headquarters of Autonomy in downtown San Francisco. This is where many of the deals you will hear about were negotiated.

It is true that Dr. Lynch and his executive team worked from the United Kingdom, but it's also true that the bulk of Autonomy's business and most of its important customers were right here in the United States. Indeed, in 2010, fully

68 percent of Autonomy's revenues came from the Americas.

Three of Autonomy's most important acquisitions were also companies in the Bay Area. In 2005, Autonomy bought a U.S. company called Verity, which was based in Sunnyvale and was one of its biggest competitors. Verity made a useful, if unremarkable, indexing software called KeyView. You will learn that Dr. Lynch sometimes falsely claimed KeyView sales were IDOL sales in order to boost his claims that IDOL was growing organically.

In 2007, Autonomy bought a U.S. company called Zantaz, which was based in Pleasanton. Zantaz had a service called DigitalSafe, which, as the name suggests, basically was an electronic safe that banks, insurance companies, and other companies could use to save data like emails in a way that could be searched easily. This was a big change for Autonomy, because Zantaz's customers were used to paying month-to-month for the storage of their data. You will learn that Autonomy discounted these lucrative long-term Zantaz service contracts in order to boost short-term revenue and claim a sale of IDOL license, which the DigitalSafe customers usually did not want and did not use.

And in 2009, Autonomy bought yet another U.S. company called Interwoven, which was based in San Jose. Interwoven had a software product called Team Site that helped companies manage their web site content. You will learn that the

analyst, the London market analyst following Autonomy, had a lot of questions about why Autonomy would buy a web content business. Those were very good questions, and they provoked some very misleading answers by Autonomy.

Sushovan Hussain was Mike Lynch's right-hand man. They shared the same office suite and worked within only a few feet of each other. That is important for two reasons: First, even though he's not here, you will learn that Mr. Hussain was the central person in carrying out this fraud, because he ran the fraudulent deals, and he falsely accounted for those deals.

And second, the evidence will give rise to a reasonable inference that Hussain's centrality was exactly how Mike Lynch wanted it. He could exercise control over Autonomy's financial statements through his control of Hussain, but without creating a clear paper trail leading back to him.

Two other people had key roles in Mike Lynch's universe. They were Andy Kanter, the general counsel, and Pete Menell, the Chief Technology Officer.

Dr. Lynch used Kanter as his enforcer with would-be whistleblowers or analysts who were critical of Autonomy. And Dr. Lynch used Mr. Menell to create what you will learn were, quote, pretextual, end quote, reasons for buying technology Autonomy didn't need to fund the round trip deals Hussain was putting together.

Dr. Lynch and these three critical lieutenants formed the

executive management team at Autonomy, but Steve Chamberlain had a critical role, too. His job was to handle the auditors. Hussain relied on Mr. Chamberlain, his number two in finance, to pass off backdated documents and other misleading information about the fraudulent deals to the auditors.

You will hear from the other Autonomy managers on this chart. Christopher or Stouffer Egan was the head of sales. He worked closely with Dr. Lynch and Hussain. Egan received immunity in this case and is cooperating with the Government. If you credit his testimony, Stouffer Egan will give you the insider perspective of how Autonomy was boosting its revenue and creating the false appearance of growth.

Mike Sullivan came from Zantaz. In this case he will tell you about the EMC and Dell hardware he sold for Autonomy at a loss.

Joel Scott was one of the in-house lawyers working at Autonomy here in San Francisco. He will tell you about how many of Autonomy's deals concerned him.

Ian Black worked at Autonomy for years, often very closely with Dr. Lynch. He will tell you about how tightly Dr. Lynch ran Autonomy.

Matt Stephan worked closely with Mr. Chamberlain in Autonomy's finance department, until he got too fed up with trying to justify Autonomy's accounting for the fraudulent deals, at which point he left.

Harald Collett was Autonomy's head of OEM sales. You will learn that OEM means Original Manufacturer Equipment. Autonomy claimed to be selling IDOL to other companies to embed or to OEM in their products. Harald Collett will tell you about how that was not always true.

And finally, Mark Geall was both an analyst following Autonomy and then an insider at Autonomy until he also left because of his concerns about the truthfulness of Autonomy's public disclosures.

Let's talk about the evidence of the defendants' fraud and how it worked.

The correct beginning point is the London stock market and its expectation for Autonomy's growth. Please take a moment to familiarize yourself with this bar chart. You will see several versions of this chart as we layer in the problems with Autonomy's financial reporting.

First is for the 10 quarters that are relevant to the charges in this case. They run from the first quarter of 2009 through the second quarter of 2011 when HP bought Autonomy. This chart shows you the market's consensus estimates. Think revenue targets for Autonomy for each of those quarters.

Emails like these will show you that hitting consensus estimates, hitting the market's targets for Autonomy was the absolute total focus of Mike Lynch.

As the quarter grew closer and closer, you will see Hussain telling Dr. Lynch what deals they need in order to hit the market's consensus estimates.

As you will learn, even after the close of the quarter, Hussain was pushing Mr. Chamberlain defined revenue that got Autonomy to the consensus estimates for the quarter. And guess what? Autonomy usually managed to somehow meet or exceed the market's consensus estimates.

The gray segments show you the amount of revenue Autonomy claimed for each of those 10 quarters. You will see that Autonomy was at or near the market consensus estimates each quarter. Please take a close look at these gray segments.

I'm now going to walk you through the evidence you can anticipate hearing that shows these revenue claims by Autonomy were false and misleading.

How was Autonomy able to meet the market's quarterly consensus estimates so often? The evidence will leave no doubts in your minds that it was through fraud.

The segments in red were fraudulently recognized revenue that should not have been included in Autonomy's financial statements in those quarters. These red segments should have been subtracted from the gray totals Autonomy fraudulently claimed. How will you know that?

The Government retained an independent expert to render an opinion about the correct accounting at Autonomy based on

complete information, not the lies Autonomy fed to its auditors. The independent expert reviewed Autonomy's books and records carefully. It took a long time. It cost a lot of money. The Government spent that money in order to get the accounting right. In the end, the opinion of the independent expert will leave no reasonable doubt about the materiality and scale of the fraud at Autonomy.

How was Autonomy able to falsify millions and millions of dollars in revenue for two and a half years? That brings us to Autonomy's value-added resellers, or VARS, as they're often called in this case. Those VARS were Capax Discovery, a service provider in New Jersey. There are three interrelated VARs: MicroLink, MicroTech, and DiscoverTech in Virginia.

You're going to hear a lot about these VARs through the people who ran them. John Baiocco at Capax will tell you about the handshake deals. Think oral side agreements he had with Autonomy.

And the Truitt brothers, Dave and Steve, will tell you how their companies bought software from Autonomy and figured out over time that they did not have to pay for it until Autonomy sold it to a real customer or end user or otherwise paid them.

Finally, you'll hear from Bill Loomis from Filetek. The evidence will show Mr. Loomis drove a very hard bargain with Autonomy. He said he would buy Autonomy software but only if Autonomy bought Filetek software for millions more, and he did

it twice. If that sounds like a great deal for Filetek and a bad deal for Autonomy, you're absolutely right.

Now, it's perfectly fine to use resellers. In fact, it's a common practice in the software industry, but you will learn that it is not okay to verbally reassure the resellers that they don't have to pay until there's a final sale to an end user or to otherwise make side agreements with them about payment terms.

You will hear from at least two witnesses from Deloitte, the public accounting firm Autonomy hired to review and audit their financial statements. These witnesses will tell you about the careful, methodical steps the auditors undertook in their quarterly reviews and year-end audits to check whether Autonomy's financial statements were fairly presented, the standard Autonomy was expected to meet.

There are two important things to remember about Deloitte. First, it was Autonomy's, not Deloitte's responsibility to fairly and accurately present its financial statements to the public. Deloitte's job was to render an opinion about whether Autonomy did that. You will learn that this distinction was important to the auditors because the responsibility for getting the accounting right always rested with Autonomy, not Deloitte.

Second, the witnesses from Deloitte will tell you that Autonomy's financial statements came in two parts: The

narrative in the front half, as they describe it, and the numbers in the back half, by which they mean the balance sheet, statement of operations and other core financial statements.

The auditors will tell you that their standard of review was different for these two parts of the financial statements. They carefully audit the numbers in the back half, and they read Autonomy's front half or narrative to ensure that descriptions of those numbers are correct.

Deloitte did not audit how Autonomy chose to describe its business in the front half of the financial statements.

Let's turn to the evidence of how the defendants carried out their scheme to defraud. Here are the types of accounting fraud that happened at Autonomy.

You will learn that side agreements are oral promises. Every one of you on the jury has heard about people who avoid putting things in writing. Why do people do that? Each of you already knows. People do that to hide what's really happening.

A side agreement means that not all the terms and conditions of the deal are in the relevant contracts. If the contracts are not right, you can't get the accounting right. In this case, you will learn that Autonomy used side agreements to assure software purchases -- purchasers that Autonomy would pay them before the purchaser had to pay back Autonomy. You will learn that if the auditors knew about the side agreements, the revenue from that deal may not be recognized, which was

exactly why Autonomy made sure these were oral or handshake deals.

Backdating. Backdating is simple. Backdating is falsifying a document to suggest it happened during the quarter when it really happened after the quarter. In the course of the trial you're going to learn that dates like March 31st, June 30th, September 30th, and December 31st, the day the quarters at Autonomy ended and the cutoff for its financial reporting occurred, were when the deals, many of the deals were finalized.

You will learn that the end of Autonomy's quarters were always a frenzied period. Autonomy did not always get enough deals to meet their quarterly goals, so they backdated some deals to pretend they had enough revenue.

Roundtrips were barter deals. Also simple. I pay you $110, you pay me $100, we pretend that the deals are not really related. I recognize $100, even though I'm losing $10. That's a roundtrip. Add a few zeros, and that was what Autonomy was doing to hit its numbers.

Channel stuffing. Also simple. It is shipping more products to distributors and retailers saying you can sell then they can sell. This was done with Autonomy's resellers. The resellers would take the software, not pay for it, while Autonomy tried to sell it to a real customer called, in this case, an "end user." When the sales to the end user failed, as

they sometimes did, the software and debt piled up with the reseller. Why would the reseller agree to channel stuffing? They got paid a commission like 10 percent margin on every deal. Why would Autonomy channel stuff? To fraudulently pad its revenue.

Pretend delivery. It speaks for itself. For hardware, you have to actually deliver the hardware to recognize the revenue. What did Autonomy sometimes do? They just phonied up the documents to pretend they delivered the hardware.

Finally, accelerated hosting deals. Also not that hard to figure out. If you have a regular long-term revenue stream like the fees Autonomy was getting for hosting and maintaining a ton of bank records, Autonomy would discount those future revenues in order to get a big revenue bump upfront. It's not more complicated than front loading some more revenue now in exchange for a massive revenue loss later.

Ladies and Gentlemen, there's a lot of jargon around these deals. Please don't worry about that. Keep your eye on the dollars. Keep asking yourself does this deal make any sense? If, based on the evidence, you believe the answer is no, trust your own judgment. Trust your own common sense.

By the end of the trial you're not going to be experts in accounting, but you will be experts in the accounting fraud at Autonomy.

Let's discuss some of the specific examples of each of

these types of accounting fraud, starting with side agreements.

In the second quarter of 2009, Capax Discovery bought what was known as EDD Software or eDiscover software from Autonomy for approximately $7.5 million. You will learn that there was no way Capax Discovery could actually pay for that software. The evidence will show the only reason Capax agreed to buy the software was because of a side agreement or handshake deal that Autonomy would pay Capax the money to pay for the software.

And that's exactly what happened over the course of the next year. Capax billed for so-called, quote, EDD processing work. This was work that Capax did not do and Autonomy did not need. Invoices like these were phony business records intended to mislead the auditors about what happened. And Autonomy paid the bills, often right around the time it wanted Capax to do another deal.

Why did Autonomy pay for work that never happened and it did not need? Because there was a side agreement that Autonomy would pay Capax on the back end so that Capax could pay Autonomy for the EDD software. Documents like this are examples of Autonomy cooking its books.

You will learn that Capax became a prolific partner of Autonomy's. Capax and Autonomy did multi -- multiple million-dollar deals at the end of 8 of the 10 quarters that are in question. Some were similar sales of EDD software where Autonomy agreed to pay Capax on the back end. Other deals were

reseller deals in which Autonomy had a side agreement with Capax that Capax did not have to pay for the software until there was a sale to the final customer or end user.

The documents in this case will leave no doubt that Mike Lynch approved of some of these deals, because exhibits like this one showed Dr. Lynch approving the payments to Capax.

Backdating. An example of one of the backdated deals happened in January 2011, after the quarter closed, involving a $3.5 million sale of software to DiscoverTech with the end user, Bank of America.

The documents will prove that the deal was agreed to on or around January 25th, twenty-five days after the quarter ended. That deal was then backdated to make it look like it happened in the quarter when it didn't. How? With documents like this. The evidence will prove that Autonomy falsified the date and backdated it to December 31st, allegedly in the quarter, so they could recognize revenue on it in Q4.

Steve Chamberlain knew the deal was backdated, because it comes to him late on January 26th. Steve Chamberlain then turned around and lied to the auditors when he said Autonomy had not received a confirmation from DiscoverTech that it owed the $3 million as of December 31st. Mr. Chamberlain falsely suggested that the debtor confirmation had not been included because the deal had not been invoiced at year-end.

The evidence will show that that was a deliberate attempt

to mislead Deloitte about the fact that the deal was backdated, and falsely suggest that the $3 million contract existed on December 31st when it didn't. In fact, a $3 million deal was not on the original debtor's confirmation, because no contract existed on December 31st, 2010, not because it hadn't been invoiced. This is an example of Steve Chamberlain feeding the auditors an outright lie.

There will be multiple backdated contracts in this case.

Roundtrips. One of the clearest examples of Autonomy's roundtrip or barter deals were two of the deals it did with Filetek. The first one was in Q4 2009 for approximately $8.5 million. In order to induce Filetek to pay that kind of money, Autonomy had to simultaneously agree to purchase approximately $10.4 million in software from Filetek. The money was going in a big circle. Autonomy was paying nearly $2 million extra to get this revenue.

The evidence will show that Mike Lynch knew about this barter deal. Exhibit 394 is an example of a spreadsheet. Hussain kept tracking deal status and how much revenue Autonomy still needed to hit the quarter's consensus estimates. Hussain often shared these spreadsheets with Dr. Lynch, as he did here.

The spreadsheets are dense, but if you spend time with them, and the FBI has, they reveal how Hussain kept Dr. Lynch apprized of the status of deals and how aspects of the fraud really worked. This spreadsheet shows that Dr. Lynch knew

about the arrival of the $8 million in revenue from Filetek.

That's important, because these exhibits show that Dr. Lynch was simultaneously approving the payment of about $10 million to Filetek. Evidence like this will show you that Dr. Lynch saw and participated in both sides of this roundtrip or barter deal.

There was a second roundtrip with Filetek in the next quarter. Filetek bought an Autonomy license for approximately $9 million, while Autonomy bought a Filetek license for approximately $11.5 million, two and a half million dollars more. Again, Mike Lynch approved the payment for this roundtrip or barter deal to FileTek in Q1 2010.

You will learn that there were often detailed writeups purporting to justify why Autonomy needed software from a partner like Filetek. The evidence will show that these technical justifications were false documents created to mislead the auditors.

Chris Goodfellow, an Autonomy software engineer, will testify that Autonomy did not need and did not use Filetek software.

Stouffer Egan, who negotiated this deal, described these technical justifications as, quote, pretextual emails, end quote. Meaning, Autonomy pretended to justify the purchase when the real reason for the purchase was to induce Filetek to buy Autonomy software.

Channel stuffing. A good example of the evidence of Autonomy's channel stuffing was its relationship with MicroLink and David Truitt. By 2009, Autonomy and MicroLink had entered into a number of deals. MicroLink had not fully paid Autonomy for a number of those deals. Nevertheless, Autonomy sold MicroLink more software for approximately $4.8 million in the second quarter of 2009.

There are additional deals in 2009 in Q3 and Q4.

Now, Ladies and Gentlemen, you'll learn that the problem with channel stuffing, selling stuff to companies to re-sell where there's no demand for the product, is that the channel can get really stuffed, and that's exactly what happened with MicroLink.

By late 2009, Autonomy had sold so much to MicroLink that MicroLink owed Autonomy over $24 million. That's a big receivable. It could raise a lot of questions about whether this was real revenue or not in Autonomy's deals with MicroLink.

So, the defendants came up with a plan to wipe that debt off the books by buying MicroLink at the end of 2009. In this document, Mr. Chamberlain is discussing that very idea with Alan Rizek, the finance officer from MicroLink.

Mike Lynch sure agreed with this plan and okayed the purchase of MicroLink for $55 million, and that's what happened on or about January 4th, 2010.

Pretend deliveries. You'll learn that to recognize revenue on a sale, you have to deliver the product. To deliver software is usually pretty easy to do. All it takes is the click of a button to send the software electronically to the purchaser, but to deliver the hardware is much harder. It often takes coordinating inventory, warehouses, trucks, sometimes it does not all happen on time, and that was exactly what happened in this hardware deal in 2009.

Mr. Egan put together a deal to sell Morgan Stanley's $6 million in hardware, but near the end of June, Egan alerted Mike Lynch that there may be problems actually getting all of it delivered in time.

Again, the answer to this problem was for Steve Chamberlain to falsify the documents. In this document, after the close of the quarter, he's asking Mike Sullivan to do that and get EMC, the hardware provider, to say that it had shipped the hardware on June 30th when it hadn't. That's why Mike Sullivan says "No."

Undeterred, Steve Chamberlain arranged for Sullivan to get versions of the pro forma, or estimated invoices for the hardware changed to remove the reference to the fact that the invoices were estimates and not final. And then Steve Chamberlain passed off the altered invoices to the auditors and falsely convinced them that the $6 million in hardware revenue should be recognized because the hardware had been delivered

before the end of the quarter when it hadn't.

Before I move into the last type of accounting fraud, accelerated hosting, I want to pause for a moment and alert you to the evidence that will be provided by Brent Hogenson and others from his finance team.

To do that, I want to start by looking again at the bar chart with the red segments signifying the amounts of accounting fraud. One bar is not like the others. One bar does not have any red signifying fraud. That's the bar for Q2, 2010. Why? Why was that? The answer, you will learn, was that the time period of Q2 2010 was the time period when the first whistleblower in the case emerged, Brent Hogenson.

Brent Hogenson, you'll learn, was a finance officer that came to Autonomy from Interwoven. He was the CFO of Autonomy Americas. People on Hogenson's team, like Reena Prasad and Percy Tejeda, were responsible for collecting money from Autonomy's partners like Capax. They will tell you how they called Capax for payment and learned that Capax was not going to pay until Autonomy paid Capax.

For a finance officer operating outside of this criminal conspiracy, that was potentially very troubling news and may have suggested a real problem with the revenue Autonomy had recognized on sales to Capax.

This problem rolled up to Brent Hogenson, who looked into it further and discovered more problems with the deals relating

to Filetek. In this way Brent Hogenson was learning some of the same facts and details of this case that you will be learning about in the course of this trial.

The evidence will show that Brent Hogenson quickly elevated his concerns to the CEO Mike Lynch and others at Autonomy, whereupon he was met with some very stiff resistance by Dr. Lynch.

Mr. Hogenson persisted and still elevated his concerns further to the auditors. What you'll learn is that Brent Hogenson was eventually fired together with his coworkers. Joel Scott, the general counsel for Autonomy Americas, who worked in San Francisco, will describe the facts and circumstances surrounding the terminations and the concerns that he had about being involved in them. This evidence suggests that Brent Hogenson spoke up as a whistleblower and got punished for his troubles.

Accelerated license revenue. This is the last type of accounting fraud. The accelerated hosting deals that were improperly recognized as revenue by Autonomy are in the orange segments.

You'll see the largest of these orange segments, 27 million, was in the second quarter of 2010, the very quarter around Mr. Hogenson's whistleblower complaint.

The evidence suggests that Autonomy could not engage in fraudulent transactions with the VARs in the same quarter that

Hogenson was raising complaints about the fraudulent transactions with the VARs. So to make its consensus estimates, Autonomy doubled down on its use of accelerated hosting deals.

The accelerated hosting deals involved the Zantaz business unit at Autonomy and some of the largest banks in the world like J.P. Morgan Chase, Morgan Stanley, and Deutsche Bank. The banks had deals with Zantaz to store their voluminous bank records in what they called a DigitalSafe. Importantly, the banks paid big quarterly fees or regular fees to store this information, and the revenue for that service was recognized as a service as it was provided over time.

Let's look at one of these deals. One of the biggest of the accelerated hosting deals was with J.P. Morgan Chase at the end of Q2 2010. Autonomy went to the bank at the end of the quarter, offered to substantially discount their DigitalSafe hosting service if JPMC would buy software from Autonomy that the bank did not need or use. This allowed Autonomy to claim a license sale, a software license sale, but at the expense of losing a ton of revenue in future quarters.

Exhibit 16983 is an Excel spreadsheet that shows you how much of a discount Autonomy was willing to offer. The original hosting deal was for approximately $68 million over time. If JPMC bought the software for $8.6 million, then Autonomy would give it a 69 percent discount of approximately $46 million.

Ladies and Gentlemen, those numbers speak for themselves about how desperate Autonomy was for revenue in Q2 2010.

This is a demonstrative exhibit of how the payments would occur over time and what happened as a result of the discounting. And this is the amount of revenue that Autonomy got for that massive discount.

That brings us to a new form of fraud revealed by the evidence. Dr. Lynch's false and misleading disclosures about whether Autonomy was selling hardware. You're going to learn it was. It was selling lots of it over many quarters. And the evidence will show that Dr. Lynch did everything he could to conceal those hardware sales from the market and eventually from buyers like HP.

On Autonomy's web site, Dr. Lynch claimed Autonomy was a rare example of a pure software company. He falsely suggested that much of Autonomy's revenue was from the sale of IDOL and other high-margin software products when, in fact, millions and millions of Autonomy's revenue was from the resale at a loss of hardware devoid of any Autonomy software.

The claim that Autonomy was a pure software company was in fact totally untrue, and Dr. Lynch knew it was untrue, which is why he worked so hard to hide the scale of Autonomy's software -- hardware sales.

This bar chart introduces Autonomy's hardware sales in yellow. It was millions and millions of Autonomy's revenues.

In the four quarters of 2010 alone, hardware accounts for almost $100 million of Autonomy's total revenues. Ladies and Gentlemen, that's a lot, and if the market knew that reality, you will learn that investors would have dumped Autonomy stock and its value would have plummeted. So Dr. Lynch worked very hard to hide Autonomy sales, and his ways of doing that you'll learn were especially sophisticated.

A couple of things about hardware. First, much of the revenue from Autonomy's resale of EMC and Dell hardware was at a loss but was still good revenue, but you may find it was incredibly bad business.

Second, the auditors knew and approved some of Autonomy's hardware sales. There were important exceptions and real issues around the accounting for the expense of the hardware, but Autonomy rightly claimed some of the hardware it sold as revenue.

Third, the fraud relating to the hardware comes in how Autonomy characterized the revenue it derived from the hardware sales. Dr. Lynch falsely suggested to the market that it was software revenue when it wasn't.

Lastly, every single tech company buys and sells some hardware. What was different about Autonomy was the scale of its hardware sales. The evidence will show that no pure software company sells hardware devoid of software on the scale that Autonomy did.

You will learn that Autonomy resold at a loss monitors, keyboards, computer mice, things that could never contain Autonomy software. Autonomy also resold EMC and Dell laptops at a loss, but the evidence will show that these laptops also did not contain Autonomy software.

You will learn that to re-sell the EMC and Dell hardware, Autonomy had to effectively insert itself into the complex supply chain arrangements of major banks like Bank of America.

SHI is a business that sold substantial amounts of Dell hardware to Bank of America. In order to insert itself into the sales chain, Autonomy purchased Dell hardware and resold it to SHI at a loss. SHI then sold that hardware on to the Bank of America.

Zones was another tech supplier to major corporations like Target. Autonomy did the same thing with Zones for the same reasons. You will learn that Autonomy told its auditors it was selling hardware as a software marketing initiative to gain entry to major customers like Bank of America.

A witness involved in the hardware procurement from SHI, however, will tell you that she never disclosed Autonomy's role to the -- in the hardware sales to Bank of America, and she was not aware of anyone else at SHI who did as well.

Why does that matter? It matters because it shows that far from being a pure software company, a significant amount of Autonomy's revenue was derived from acting as a

straight-forward hardware reseller. It helped show that Autonomy's purported explanation to its auditors for why it was engaging in hardware sales was misleading. And the scale of Autonomy's hardware sales at a loss shows its desperation to inflate its revenue numbers even if it came at a multi-million dollar cost.

In terms of dollars, the deals with SHI and Zones were some of the Autonomy's biggest contracts, a fact that Autonomy was especially careful to hide from HP.

There's no question that Mike Lynch knew all about the hardware sales. Mike Sullivan will explain how Dr. Lynch and other executives talked about how easy it would be to sell a lot of hardware at discounted prices. They even joked about how many Porsches Mike Sullivan would earn from selling 20 million or more in hardware.

Again, there's no question that Dr. Lynch, here indicated by his initials "MRL," knew about the hardware sales because he approved Sullivan's substantial sales commissions for those hardware sales.

Let's take a close look at Exhibit 214, an email in late Q3 2009 from Mr. Hussain to Dr. Lynch letting him know how bad sales have been. It says: (As read) Yesterday was very bad. Interwoven 2 million off and U.S. IDOL 6 million off. Covered with part JMC/EMC.

I submit to you the evidence will show you that was a

reference to the hardware sales, and they're covering their quarter with the hardware sales.

Continuing: Mr. Hussain says: (As read) But now worried more will fall out. Am at 189 million to 190 million.

That's a reference to the amount of revenue they have in the quarter four days before the end of the quarter.

Continuing: (As read) With 3.7 million of EMC stuff.

Again, a reference to hardware.

(As read) We have 41 million so 10.3 left to recognize.

Okay. And I submit to you, when you've heard all the evidence, that that's a reference to the amount of hardware they have and how they're using it.

Ladies and Gentlemen, a careful reading of this email suggests that Autonomy is stockpiling its hardware revenue in case software deals fall out. Why would Dr. Lynch and Mr. Hussain do that? To assure that they would receive the consensus estimates for the quarter, using more and more hardware if they have to do so.

A close look at the Q3 2009 bar chart shows you that without all this hardware revenue in yellow, Autonomy would have missed its consensus estimates by nearly $42 million. Analysts will tell you that a miss of that magnitude would have been calamitous for a company like Autonomy.

But there's a problem with reselling hardware at a loss to pad your revenues. It costs a lot, and it's hard to hide those

costs on your balance sheet, but the defendants came up with a sophisticated way to do it.

Let's take a close look at Autonomy's balance sheet for the third quarter of 2009. You got total revenues, but then you have the cost of those revenues or what is known as cost of goods sold. When you subtract what it costs to make your product, you get your gross product.

Now, from this figure of gross product, you can derive the so-called gross margin or the value of your product by doing some simple math.

Investors and analysts will tell you that gross margin was one of the most important performance metrics of them all. Autonomy crowed about its high gross margins which were often around 90 percent.

To keep its gross margins high, the defendants had to get the expenses for all the hardware it was selling into operating expenses or, as the terms are used, below the line that you use to calculate gross profit. And the evidence will show that the creative way that they did that was to say that millions of the hardware expenses were for sales and marketing and development costs.

Now, that's a lot of accounting, I know, but it reduces itself to some very simple math.

Take your total revenue, you subtract what that revenue, what it cost to make that revenue, and you get gross profit.

Once you have your gross profit, if you divide by the amount of revenue you get, that equals your gross margin, the key metric for the market about the value of your product.

In the case of software, you might have an example like this. You have -- you sell software for $100. It costs you approximately $10 to make. You have a gross profit of $90. That gives you a gross margin of 90 percent.

It's different for hardware. You sell a hardware component for $100. It costs you a lot more to make, maybe $90, so your gross profit is only $10, and your gross margin is only 10 percent.

You'll learn that Autonomy wasn't even doing that well. Autonomy was selling hardware for $100 that cost it, in this hypothetical, $110. It was losing $10 on every deal. That's a negative margin. That causes a lot of consternation within Autonomy, certainly between Dr. Lynch and Mr. Hussain.

Please take a close look at Exhibit 281. This is a fascinating look at how these two people worked together. What was Sushovan Hussain so worried about? (As read) Mike, I'm burnt out, given my anal nature. I'm spending all my time, (awake and asleep) worrying about the 10 minutes on Tuesday, when they were going to talk to and announce their earnings and talk to the analysts.

The evidence will show that Mr. Hussain was worried about how Autonomy will ever explain to the market that it had

approximately $40 million in expenses for the hardware it sold. If Hussain told the truth about what they were doing, it would crush Autonomy's claims about being a high-margin software seller.

No problem. Mike Lynch stepped in for Mr. Hussain in the earnings call. What he says during the earnings call is both highly sophisticated and deeply deceptive. Let's go through why.

Mike Lynch pretended that the expenses associated with the hardware was really expenses relating to developing and marketing an alleged new product launch called "SPE," and the so-called quick-start program they had around it. That means the expenses would go to sales and marketing critically below the line to calculate gross margin. It was a way of hiding the hardware expenses below the line.

But you will learn that what Mr. Lynch was calling SPE was not new and did not cost millions to develop or market, but that was still what Dr. Lynch told the analyst.

Autonomy told its auditors something very different. Autonomy told its auditors that the hardware was part of a strategic software sales initiative with major hardware providers like EMC. But Dr. Lynch does not tell that to the analysts, because if you told the market Autonomy was selling $42 million in hardware, it would have called into question the valuation models the market had for Autonomy as a pure software

provider.

But analysts, you will learn, can be quite persistent. Analysts like David Toms, who you'll hear from, kept asking about Autonomy's hardware sales. So Dr. Lynch doubles down with false statements like this one: Quote, so what we are not doing here is acting like a generic company that resells hardware, end quote.

In fact, Ladies and Gentlemen, you will learn that was exactly what Autonomy was doing: Reselling generic hardware at a loss, and Mike Lynch was straight out lying about it to perpetuate the false narrative that Autonomy only sold high-margin software when in fact they were selling a ton of low-margin hardware.

Hardware was not the only thing Mike Lynch was lying about. You will learn that he was deceptively claiming that Autonomy's IDOL software was incorporated into other companies' products, a process called Original Equipment Manufacturer, or OEM, when, in fact it really wasn't OEMed.

Starting in the first quarter of 2010, Autonomy began to disclose, allegedly, how much of its revenue was OEM. The amount of OEM revenue Autonomy said it had earned is indicated in these dark blue segments. You'll learn that the OEM revenue is an especially valuable form of revenue. When you OEM your product in another company's product, that company sells your stuff for you. All you have to do is sit back and collect the

royalties. Companies can earn money for doing nothing by OEMing.

And there was a -- there was a problem. Dr. Lynch's claims about OEM revenue were not true. When you look closely at Autonomy's records, the Government's independent expert will say the amounts in the light blue segment were invalidly claimed as OEM revenue. That evidence is corroborated by Harald Collett, Autonomy's former head of OEM sales. Mr. Collett will tell you how Dr. Lynch urged him to make false and misleading statements about Autonomy's OEM sales to investors. He will tell you how Autonomy was falsely calling Verity's product KeyView, which was widely OEMed, IDOL OEM, and he will describe the difficulties Autonomy had actually OEMing IDOL with most major customers.

All this evidence stands in stark contrast to Mike Lynch's public claims about OEM. Here, Dr. Lynch insisted that OEM IDOL -- withdrawn -- IDOL OEM turns one-off sales into multi-year commitment annuity streams. That was the way it was supposed to work. But if you credit Mr. Collett, you will find that it didn't work that way at all at Autonomy, and Mike Lynch knew it. Dr. Lynch's false and misleading statements about OEM were yet another way for him to fraudulently burnish Autonomy's image as a growth company.

And that leads to the evidence of the last and deepest of Mike Lynch's deceptions, his claims about Autonomy's so-called

organic growth. You will learn that analysts, following Autonomy, kept coming back to one fundamental question: Was Autonomy's growth due to organic revenue, demand for IDOL or was it from acquiring other companies and their revenue, non-organic revenue?

If Autonomy was growing organically, as Dr. Lynch so often claimed, then its market value was enormous. If it was growing only because it was acquiring other companies and the revenue from their products, then it was growing inorganically, and the demand for IDOL may be flattening, making the value of Autonomy much less attractive to investors.

Quarter after quarter you will learn some of the analysts struggled to figure out this critical question out. It played straight into the valuation models that supported their recommendations about whether to buy, hold or sell Autonomy stock.

You will learn that Autonomy made it very hard for them to figure this out by constantly changing its definitions of its revenue, so they could not really compare quarter-over-quarter, year-over-year growth in IDOL sales.

This slide is different from the other bar charts I've shown you today. It's a conceptual slide. It comes and will be used with the analysts in this case. It endeavors to show what the analysts will describe as one of their fundamental questions about Autonomy.

This slide tracks IDOL sales at Autonomy from its IPO, its inception, to its acquisition by HP, and it adds in, based on best available information, the amounts of revenue from Verity, Zantaz, and Interwoven, and the other companies Autonomy acquired along the way. This is what analysts like David Toms, Mark Geall, and Daud Khan will tell you they endeavored to assess in order to calculate the true market value of Autonomy and its prized product IDOL. Conceptually what is suggested by this evidence is that demand for IDOL was flatlining, was not growing.

That possibility is accentuated when you add in the numbers for the carefully concealed hardware sales in yellow. Again, the analysts in the market did not know about the scale of Autonomy's hardware sales. If they had, their assessment, you will learn, of Autonomy's growth potential would have dimmed even further.

The questions by the analysts following Autonomy raised the possibility that demand for IDOL was bottoming out, and Autonomy was a public company whose stock was going nowhere. Worse, these questions raised the possibility that Autonomy's vaunted growth story was all an artifice.

Ladies and Gentlemen, that was why Mike Lynch went to such lengths to silence critics like the analyst Daud Khan. You will learn that Mr. Khan was an analyst by Cazenove, a firm acquired by J.P. Morgan Chase. Mr. Khan was one of the few

analysts who questioned Autonomy's organic growth claims. He will tell you about the difficulty he had getting accurate year-over-year figures for IDOL sales given the ever-changing definitions Autonomy offered to describe its financial performance.

When Mr. Khan dared to criticize Autonomy in his analyst notes, Dr. Lynch arranged to have him physically excluded from the company's earnings calls. Mr. Khan could listen to the calls, but he could not be there.

Worse, Autonomy filed a referral with the equivalent of the SEC in the U.K. about Mr. Khan's allegedly -- alleging that Mr. Khan did something wrong. I submit to you that that was a false referral, and you will learn that the referral ultimately went nowhere.

All the same, much of the evidence in this trial will bear out and prove Mr. Khan's concerns about Autonomy's organic growth claims and show to you that they were well founded.

What happened to Daud Khan is another example of a knowledgeable professional speaking up and getting punished for it.

Please take a close look at this document. Evidence like this, late-night email between Dr. Lynch in December 2010 from Mr. Hussain suggest that they, too, knew that Autonomy's organic growth claims was an artifice.

(As read) Really don't know what to do, Mike. As I

guessed, revenue fell away completely. We've covered up with BofA and hopefully DB, Deutsche Bank, and Department of Interior, DOI, but if latter two don't happen, it's totally bad.

This is what Mr. Hussain is telling Dr. Lynch roughly two plus weeks before the end of the quarter, before the end of the year-end.

So Mr. Hussain recommends, continuing: (As read) So radical action is required, really radical. We can't wait anymore. Everywhere I look at U.S. IDOL, it's bad.

Ladies and Gentlemen, that is Mr. Hussain laying it out there to his boss. What does Mike Lynch do? The evidence will leave no doubt that within a matter of weeks Dr. Lynch was in Palo Alto at HP's headquarters hyping his company secretly desperate to sell.

Which brings us to the last chapter, the fraud on HP. This is a timeline of the meetings that Dr. Lynch participated in in early 2011. His promotion of Autonomy is complemented by the false and misleading claims by Autonomy in its Q1 and Q2 2011 press releases, and the falsity of many of those revenue claims are advanced by further fraud involving the due diligence period of HP's consideration of the possible deal.

Let's look closely at some of that evidence.

You will hear evidence from a series of HP executives about their evaluation of Autonomy as a possible acquisition.

One of the key things they wanted to know was who were Autonomy's top customers and what were Autonomy's top contracts.

You will learn that HP asked the right questions, but emails like this one will show you that Autonomy and Steve Chamberlain went out of their way to give HP the wrong answers. In this email Mr. Hussain was telling Mr. Chamberlain to split out SHI, DiscoverTech, Capax and Zones - all major customers of Autonomy, and all, if properly disclosed to HP, highly problematic for Autonomy for all the reasons I've discussed today.

Documents like this one, Exhibit 2144, will show you that Dr. Lynch was supervising this process involving Mr. Hussain and Mr. Chamberlain. In the end, all of the highlighted deals, the VAR deals that were afflicted with the accounting fraud, were stripped out of the document that ultimately went to HP.

This is what HP gets. You can see what is missing. This evidence suggests the defendants at Autonomy knew that they had to conceal both the fraudulent VAR deals and the hardware deals with Zones in order to get HP to buy Autonomy, and that's exactly what happened.

Ladies and Gentlemen, based on this evidence, the defendants are charged with the following offenses: They're both charged with in Count One with conspiracy. And the Court will inform you that the elements of conspiracy involve an

agreement among one or more persons, and in this case an agreement to commit a federal offense. And in this case the defendants and the others that they worked with conspired to falsify Autonomy's financial statements and public disclosures.

The defendants are also charged with multiple counts of wire fraud. One of the core elements of wire fraud is what's known as a scheme or artifice to defraud. You will learn, in the Court's instructions, that a scheme or artifice to defraud can be false or misleading statements made in order to obtain money or property committed with an intent to defraud.

A scheme carried out using interstate wires forms the basis for wire fraud. And in this case there were multiple meetings, phone conversations, emailing, and documents that are all charged to support the wire fraud counts - all conveying the false information that I've gone through this morning.

Finally, there is a final count against Dr. Lynch only. It's a charge involving securities fraud. Let me explain that a little bit.

When HP acquired or announced that it was acquiring Autonomy, it issued a press release. HP's press release announcing the acquisition of Autonomy contained representations about Autonomy's financial performance. HP required that Dr. Lynch sign this document verifying that the representations about Autonomy were all true. That's what you're looking at right now. The problem is those

representations were not true, and Mike Lynch knew that they weren't true, and, as a result, buyers and sellers of HP stock were defrauded, as alleged in the securities fraud count against Dr. Lynch.

The evidence in this case will leave no reasonable doubt that Autonomy's financial statements and public disclosures were materially false and misleading. It will leave no doubt that Steve Chamberlain lied to and misled Autonomy's auditors about key aspects of this scheme to defraud. It will leave no doubt that Dr. Lynch made false and misleading statements to the investing public and ultimately HP about the scale of Autonomy's hardware sales.

The evidence will prove that Autonomy routinely paid millions more for the deals it closed than the revenue it received. Indeed, the evidence will establish that some of Autonomy's biggest deals made no sense whatsoever except to artificially inflate revenue.

All of which raises the question: Was Autonomy an unsustainable fraud? I submit to you that Sushovan Hussain's late-night email to Mike Lynch certainly suggests as much. After all, Hussain told Dr. Lynch: "We can't wait anymore."

Why would Mike Lynch and Steve Chamberlain, both successful professionals, ever commit these crimes? The evidence suggests it was for the oldest of reasons: Money. Or in the case of Mike Lynch, money and power.

Ladies and Gentlemen of the Jury, the evidence in this case will come in like pieces in a big puzzle. Please be patient. Please keep an open mind and let the pieces come together over the course of the trial.

None of you were selected as jurors because of your knowledge of accounting. All of you were selected because of your common sense and life experience. All of you have had to grapple with people who say one thing and then do something else. The same thing happened here. If you think the deal supporting Autonomy's financial statements make no sense, please trust your own judgment.

When all the pieces are in place, I submit to you that there will be no reasonable doubt of the defendants' guilt on all counts.

Thank you very much.

THE COURT: Okay. Ladies and Gentlemen, as I indicated before the trial started, you as the jurors will decide this case solely based on the evidence presented in the courtroom. That means that after you leave here for a recess, which we're about to take, or for the evening, you must not conduct any independent research about this case, the matters in the case, the legal issues in the case, or the individuals or other entities involved in the case. This is important for the same reasons that jurors have long been instructed to limit their exposure to traditional forms of media, including

information such as television and newspapers, and now social media as well.

You also must not communicate with anyone in any way about the case, and you must ignore any information about the case that you might see while browsing the Internet or any social media feeds.

Now, from time to time, you will understand that you will be using the elevators that's used by everybody in the proceedings, and over a period of the trial you will get to know these people rather well. So you might think that, gee, it's all right to say "good morning" or "good afternoon" or "good evening" or chat with them. Well, it actually isn't. They are extremely nice people, all of them, but, but they are instructed to have no communication with you, and I suggest that you have no communication with them.

From time to time people will not be, who are involved in the trial or witnessing the trial, may not be aware that you're there as a juror, and they may be discussing something. Please move away from them. And if you hear anything that's inappropriate, discussing the merits of the case in any way, would you please tell Ms. Scott about it. But I really, you know, encourage you to govern your own conduct in the case.

We will be in recess until 11:15. You're adjourned.

(Jurors exit courtroom.)

(Proceedings were heard out of presence of the jury:)

THE COURT: Okay. Let the record reflect the jurors have left.

Mr. Weingarten, do you know how long approximately you're going to be? I don't want to interrupt -- I mean, you'd like to do it in one fell swoop, what's --

MR. WEINGARTEN: Certainly not more than 75 minutes, 90, you know --

THE COURT: Okay.

MR. WEINGARTEN: I didn't time it.

THE COURT: No, that's okay. I just -- I think what we'll do is we'll go through your opening and then we'll take our noon recess, and then when we return --

Is that all right, Mr. Lincenberg? Is that okay with you?

MR. LINCENBERG: Sure.

THE COURT: Okay. And then during the next recess we'll discuss other issues that have come up.

Okay. Thank you. We're in recess.

(Recess taken at 10:57 a.m.)

(Proceedings resumed at 11:15 a.m.)

THE COURT: Okay. Do you want to bring in the jury?

THE CLERK: Yes.

(Jurors enter courtroom.)

(Proceedings were heard in the presence of the jury:)

THE COURT: Okay. Please be seated.

Let the record reflect all the jurors are present, parties

the present.

Mr. Weingarten, you may proceed.

OPENING STATEMENT

MR. WEINGARTEN: May it please the Court, Ladies and Gentlemen, good morning.

Let me begin by congratulating my professional friend, Mr. Reeves, on his powerful opening statement. It was powerful, and it was advocacy. It was black and white. And you know what? You're going to see in this trial that ain't the way the world works. The world works in grey, the world is complicated, and the advocacy you heard this morning was advocacy.

I wrote 77 things in the course of his opening statement that I wanted to respond to substantively with legitimate, strong, powerful arguments coming from the opposite direction. And if I did that, it would be next Tishah B'Av before we were done with the 77 arguments, and that's an ethnic expression which means we'd never be there. So of course I'm not going to do that.

But happily, I did agree with one thing Mr. Reeves said. He talked about patience and an open mind at the very end of his presentation, and he took the words right out of my mouth. I'm going to ask you for the same thing. Because I promise you this, too. Virtually every witness they call, we will chip away, we will cross-examine, we will impeach, we will cause you

to have doubts. Where he claims there's fire, you will only see smoke. That's why you're here for all these weeks. The advocacy was fine. That's what lawyers do. The real world is different, and that's what you're about to see.

Let me give you an example. Mr. Reeves talked about the MicroLink acquisition, $55 million, and clearly implied the only reason Mike did that -- and Mike Lynch to some people Dr. Lynch. He has a Ph.D. To me he's "Mike." The only reason he did it, because he needed the revenue to count and MicroLink owed them $16 million.

Well, how about the other side of the story that you didn't hear? MicroLink is a critical government employee doing really important work in Washington, D.C. with virtually every branch of the United States Government, including the Defense Department, the FBI, and the NSA, and that's the business he wanted to get in. Didn't hear that.

Now, I'm not faulting Mr. Reeves. What I'm suggesting is you heard a wonderfully prepared piece of advocacy that seriously misses the entire story, and that's why we're here, and it's going to be a long process. And every day I'm guessing we're going to get closer and closer to the truth, and you're going to conclude that a lot of what you heard today about accounting fraud was nothing other than normal business done by Mike Lynch.

Backdating. Oh my God, backdating. Well, you know,

there's benign backdating. If you and I enter into an agreement on December 31st and we don't paper it, and, for whatever business reason, three days later or six months later it's important to memorialize, and there was a legitimate agreement, there's nothing wrong with that. That's utterly and completely benign.

And I'm betting you, let's see who is right here. Mr. Reeves said there's going to be a lot of backdating in this case. I'm betting you that you will have witnesses on the stand for the Government who will say that backdating they engaged in was utterly benign. That's not what you heard this morning.

The one that really flipped me out was the HP story, and this is really where we draw swords. HP, the victim. My goodness. When HP bought Autonomy, and I'm going to get to this a little later in greater detail, but I just can't help myself right now. When HP bought Autonomy, Autonomy was rated as a $6 billion business by the market. That's how they were valued by the market.

HP, because they were in such desperate shape, they so needed to do something, paid over $11 billion essentially for Mike's software. They valued it at $17 billion to their board. Of course didn't disclose that, because of the synergies, meaning all of the wonderful stuff big, powerful HP could do with Mike's software.

And you'll see a document in this case that behind the scenes when they were really talking about how much Autonomy was going to be worth to them, $46 billion, and they're talking about, oh my God, had we known about that hardware, we would be outraged. In the bowels of HP they were valuing Mike's company at $46 billion. You didn't hear that this morning either.

And the hardware, had we known, had we known about the hardware, we would have been appalled. We never would have bought this company.

Well, guess what? They sold hardware to Autonomy before the sale. All they had to do was hit their customer list and they would have figured out Autonomy was buying hardware. Ironically, during the due diligence they sold another $2 million plus of hardware to Autonomy, and in the data room itself there were contracts, hardware contracts. You didn't hear that this morning. Only that Autonomy was deceiving HP about the hardware. There were so many ways HP could have or should have known about the hardware. If the consequences of this were not so serious, it would make me laugh.

One more important thing came out of this morning. Well, many important things came out this morning, but this one in particular. Let me just take a sip of water.

Hogenson, the whistleblower. You heard a story that a CFO in the United States came forward, made allegations about the accounting, and Mike fired him because he didn't want those

allegations to get out in the open and blow the lid off Autonomy. That's the implication of what you heard this morning.

We say bunk. This guy Hogenson was presiding over the largest accounting fraud in the history of Autonomy. People under him for about a year were stealing. He never caught it. An investigation started, and then, lo and behold, Hogenson files a whistleblower complaint. In the course of the original investigation, allegations surface about Hogenson himself. And he's going -- he's on the witness list, and I'm looking forward to this. We're going to settle this one in court. Who is right here?

They say Mike fired him. And Mike didn't fire him, Joel Scott fired him because the whistleblowing. We're saying he was fired because of his own conduct. His own conduct over and over and over again made him completely unqualified to be the CFO of a public company. And you're going -- it's all going to be before you, and you can use this as a litmus test. Who is pushing the envelope too far? Is the Government? Did they properly say Mike Lynch misbehaved?

We're saying to you Mike Lynch treated him with grace. He was open to the allegations. He got a little annoyed when everything Mike Lynch said the audit committee wanted for Hogenson to do and Hogenson did just the opposite, so he got annoyed with him. But he ordered independent investigations.

And Joel Scott, the general counsel in the United States, interviewed him. There's a tape of it so you can hear it, and then fired him right in the interview.

Now, is the Government suggesting that Mike Lynch was in Joel Scott's ear or that there was some technology that Mike was using to get this guy to fire Hogenson against his will? The story is preposterous. The bottom line is Hogenson was utterly unqualified to be the CFO, and he was properly fired, and I believe that's what you're going to see in court soon.

Okay. That's my reaction to this morning.

Let's see what else I can add to the opening statement.

I want to introduce you to Autonomy. I want you to know a little bit more about what Autonomy was and what they did.

Autonomy was formed in 1996. Mike organized it. It grew like Topsy. It soon had over 2,000 employees. It had over 25,000 customers. It was operating in 20 countries. They attracted the best and the brightest. They acted like an anti-bureaucratic, anti-big-business startup. They moved at breakneck speed, and I'm told they were kind of cool for a techie company. And of course at the center of all this is the magnificent software that he created. It helped around hospitals, it helped catch crooks, it helped deliver the news, and it did many, many, many other things. Virtually every significant company in the world used IDOL software around 2010.

And let's just have number 1, if we could put it on the screen. I just wanted to give you an idea of the size of it and people working all over the world. You know, it was kind of a far-flung empire for Mike to run.

Number 2, please. All of this is sort of subsets of corporate organizations, and, again, there's more than 50, and, you know, Mike was responsible for all of it, so it was a complicated empire.

And finally, number 3, some of the customers, I get a kick out of the fact that United States -- the irony that United States agencies, including the SEC, are included, BBC, U.K. parliament. It was a big organization that grew very, very fast.

I heard Mr. Reeves talk on a number of occasions this morning about flatlining. You know, there was a big recession in the United States in 2008, and a lot of companies, particularly financial companies, suffered, but not this company, not Autonomy. And it goes directly contrary to the theory they were flatlining, and they had to start cheating if they wanted to sell themselves, because otherwise they'd be dead. That's not what happened. Just the opposite.

They were growing in 2008 and on, and the best way to show this is cash. You'll hear the expression in this trial "cash is king." You can't fake it. How much do you have? How much cash does your business produce? Cash is largely how companies

evaluate other companies.

And let's take a look at number 4. Cash generated by Autonomy from 2006 to 2010. And look at from 2008: 179. 2009: 287. 2010: 363. Growing, growing, growing. Does that look like a flatlining company to you?

And you'll hear evidence in this case that at this very time there was always about a billion dollars in cash in the bank, and you can't fake that.

And, you know, conspiracies have been charged, fraud has been charged. What the Polish star in this case, not one penny missing from what Autonomy represented to HP that they had, not one -- no one put a penny in their pocket in this case.

And, again, in 2008 there was a recession, and a lot of financial institutions were in trouble.

Autonomy built software for investigating compliance programs and lawsuits, and as a result the demand skyrocketed. The software was so powerful that no competitor was near them, and it sold like hotcakes. Flatlining? No. An upward trend in profits, cash and stock price.

And let's just have another word about the software. Many, many large companies bought it, paid for it, were happy with it, and bought more of it.

Meg Whitman, the eventual CEO of HP -- and it's ironic, we're getting recommendations from HP given where we are -- called the software almost magical.

Leo Apotheker, a sophisticated European software guy who ended up the CEO of HP, called it the gold standard and magical software. An HP web site said its ability to retrieve information surpassed even Google. And of course HP, with virtually no real due diligence, was happy to pay over $11 billion for our software.

How about number 5, these are just ads from the sophisticated rags about our software. The middle one: Computer Weekly: *Autonomy Dominates Search Space Reports, IDC*.

One down: *Autonomy Won the Enterprise Search Wars*.

Then GlobalCIO: *The World's Largest Private Cloud: Who is number one?*

And from the opening you might have gotten the impression, is all they did at Autonomy was commit crimes.

Let's look at 6. 6 shows -- the green part is the revenue in the period of the charged indictment, and it's over $2 billion. The yellow is hardware lost. All the losses that Mr. Reeves talked about, if you add up that money, that's what you get. And then the reciprocal deals, the red, so it's just a comparison of conduct that's not being challenged by the Government versus the conduct that is.

All right. Let's talk about my client. I'll give you the briefest summary of his life. He's 58. Born outside of London. Irish parents, poor. Dad a fireman, mom a nurse. Brilliant student from the get-go. Loved music. Jazz musician

early on. Couldn't afford a synthesizer so he built one. That's the kind of kid he was at a very early age. Cambridge scholarship in math, physics, engineer, and just brilliant at every turn. A Ph.D. in machine learning. Machine learning obviously is part of artificial intelligence.

I'm sure you'll hear a lot about it at this trial.

Mike invented ways for machine learning to solve problems. That's sort of the essence of his being an inventor.

First big one was he helped police with comparing fingerprints, and then he figured out a way to decipher large amounts of data and spot links to crack crime. And this is what grew into Autonomy in 1996, and at the center of Autonomy from that moment forward was IDOL. That's what he called the software: Intelligence Data Operating Layer.

And Mr. Reeves did get at this. But, simply stated, back then, I don't know how it is anymore, there's structural data and there's unstructured data. The structured data, spreadsheets, databases organized information, it's the stuff that Oracle does so well. The unstructured data is the real-life stuff: Emails, voicemails, videos, photos and prose. That's where IDOL focused.

Most data obviously is unstructured, but back then most software at the time worked on structured data.

Mike was way ahead of everybody for a long time using his technology to find significance and meaning out of the

unstructured stuff, and that was his claim to fame.

Basic IDOL expanded into over 500 applications doing different things in the unstructured world with the same magical technology. Examples: Banks, archiving emails to comply with regulations, reviewing emails to spot compliance violations, manage data for litigation, energy companies, listening to call centers that can be critical, anticipate the questions, provide answers. The Government, recognize unusual patterns in money flow to identify money laundering, compare footage of landscape through the tech explosive devices.

He served at a time as Autonomy's CEO until May 2012 when he was fired by HP.

Now, let me just say this generally. The prosecutor this morning described Mike almost in stick term -- stick form ways, that he was a dictator, that he had iron control over Autonomy. This is a flush-and-blood guy. He had back then a phenomenally complicated life, with Autonomy just being a small part of it. He had critically important positions in the government. He was incredibly involved in public service stuff. He had a huge farm that was active, and he was a significant part of it. I'm hopeful that in the course of this trial you can get all this information with particularity.

And we're going to tell you these things, and we're going to want to tell you these things not because we want you to admire him or like him. We want you to know him. We believe

the better you know him, the better off we are.

Let's talk about Mike as a CEO. There are different kinds of CEOs. Maybe some of you work for one of these kinds. They are sales guy CEOs who come out of sales and that's what they live and breathe. That was not Mike. Mike was the opposite of that. That's not Mike.

And then there's the MBA, buttoned-up CEO type. That's surely not Mike either. He was a start-up guy, that's him. That's where he's most comfortable. Eating the cold pizza at 2:00 o'clock in the morning inventing something.

But he's also the disrupting CEO, that's his greatest joy, to go where no one else has gone to make a contribution.

His management style: Run the best and brightest and let them run. And if he's interested in something, he's all over it. And if he's not interested in something, not so much. And what is he interested in? Well, surely first and foremost tech, what's next and what can we do, what can we invent? And he's also incredibly interested in strategy, marketing. I mean, his basic business was to manage data for large companies: How can I do it better, a constant question he asked. Important hires, all over it. Key customers, occasionally largely with the Wall Street banks, and certainly -- and it's consistent with what you heard this morning, he was an interface with the markets.

And acquisitions are important. They're fewer than with

many companies. There are companies that seem to buy other companies every week. That wasn't Autonomy. But the big question was buy a company and get a specific piece of software, a specific piece of technology or build it. And he was surrounded by fabulous, talented engineers who always wanted to build it, but often he chose to buy.

Fairly stated, big picture: Mister outside.

What is he not so interested in? Sales. Not a salesman at his very core. Legal, not so interested in what's going on in his legal office at the company. HR? Nope. And yes, accounting. Not an accountant, not interested in accounting, just wasn't his thing, and that's just the truth. And administrative stuff, oh, my God, not that either. But he was obviously a very smart, confident CEO. He knew the basics, not much interested in the subject. He relied on others to do the day-to-day stuff.

And you know, it started this morning. They will endeavor to make him omniscient omnipotent and omnipresent at Autonomy. Not true. Not true because he had so many other interests and responsibilities, obviously impossible, there are only 24 hours in a day, and this is important. 8,000 miles and many, many time zones separated him from the great majority of the conduct these guys don't like, which happened here.

And you know this, and it's obvious, as you can see from some of our exhibits, this was a large international company.

It would be unfair and inconsistent with the instructions you're going to get from the judge to hold Mr. Lynch, Mike responsible for every misdeed or every piece of wrongdoing anywhere and everywhere in the company. That just wouldn't be right.

And also true it was subtle, but I suspect there will be some efforts to try to make you not like Mike Lynch, and let's just be straight about that. Mike Lynch is a hard charger. He can be demanding. He can have an edge. He can be aggressive. He can impose exacting standards. In his perspective, he wanted the best from people, wanted people to reach their potential at work, and fundamentally believed this was his duty as the CEO.

How did people respond? Many people admired him. Many relished the challenge of working with him and the opportunity to make lots of money. Many wanted to please him, and this could be relevant at this trial. Some couldn't handle the challenge of working with him and were intimidated by him. That's also true. And some had less than satisfactory experiences with him and hold him responsible to this day, and I'm guessing you're going to see examples of every category at this trial.

Now, Mr. Reeves introduced the idea that we're in an accounting world here. I had a trial lawyer friend who once said if there's no sex, drugs or rock & roll in a case he's not

trying it. He would not try this case. This is an accounting case. And no offense to any accountants or people related to accountants, they do incredibly important work, and we'd all be lost without accountants, but it can be dry, and there will be parts of this case that will be dry.

A concept that is critically important to this case is Autonomy's accounting was run under the IFRS standard. That's the standard of almost the entire world. Here in the United States we have GAAP, Generally Accepted Accounting Principles. Hugely important, because there's confusion afoot between the two systems.

IFRS is generally called principles-based. GAAP is generally called rules-based. The IFRS principles-based means it's a set of guidelines, overarching principles. Where on the United States side accountants are more used to specific rules particularly when it comes to software. I mean, you're going to see over and over again people getting mixed up between the two.

But on the IFRS side, which is really important, you frequently hear it said that you can have two principled accountants wrestling on the same problem coming out on the opposite sides without either being wrong and certainly either being corrupt. And you're going to have witnesses for the Government, at least one expert that they've announced, who are going to come out with after-the-fact opinions about the

propriety of some accounting that we're going to challenge, and just remember that principle that you'll hear from IFRS.

And of course at the center of this case it's going to be the concept of the significance of making your numbers. It's going to be a big deal. And the implication from this morning was if you endeavor to make your numbers, there's something off, there's something wrong, there's something not right.

Children, get inside. Autonomy was trying to make its numbers. They sure did, and so does every other public company in the universe. Public companies always want to hit their consensus numbers. You'll learn all about how those consensus numbers are formed, and it's a sign that a company is doing well. And management has a duty to shareholders to preserve and protect and grow the business, and making the consensus numbers is part of the duty. It's not a mystery. This is not controversial. It's the law of the land. Not really the law of the land, but it's how public companies work.

And understand, you can do about a million legitimate things at the end of the quarter to pump up your revenue, to pump up your sales. You can hire more salesmen; you can offer bonuses; you can do gimmicks; you can do a two-for-one; you can lower prices. This is as normal as apple pie. This happens, and it happened in -- the equivalent happened in this case.

And it's true if you don't make their numbers, your stock price can go down. And in this case there are 10 quarters in

play, and we didn't make our consensus numbers about half the time.

Please put up number. Number 8.

So there are essentially 10 quarters that are covered by the indictment, and about five of them we didn't make our numbers. And in truth, the stock went down just a little bit, and then the stock went back up and normalized. The point being -- and I guess we weren't so hot at making our numbers during the conspiracy if we missed five times. It's a little ironic, but it wasn't the end of the world. You know, 5 times out of 10 Autonomy didn't make its numbers. There was no bankruptcy, no hari-kari, and the stock price went back up.

In truth, you'll learn that Mike despised living quarter-to-quarter. He thought it was the bane of western economic systems. He wanted to strategize. He wanted to long-term plan, and he hated the pressure he was under to make the numbers like every other CEO. And in England it's different. There's a special law that the CEO has to report to his shareholders at a given time if he anticipates a drop in stock and not making the numbers. So not only did he have to do it in general, he had to do it in specific, consistent with U.K. law. And you'll learn that he did form important strategies, completely indifferent to the exigencies of the quarter system, and they were successful.

And revenue. Revenue, revenue, revenue, another

prediction. The fundamental Government position is all we cared about was revenue, and we were prepared to kill and cheat if we didn't make our revenue numbers. Look, memo to my friends over here: Of course revenue is important. We agree, it's good if people buy your stuff. Salesmen understand this metric, but it's not the only important metric. It's not even the most important metric.

You get people voting differently on this, but certainly a lot of people would say cash is king. Either you have that 10-spot in your wallet or you're not. There's no fooling around with cash. And, again, you saw Autonomy's cash skyrocketing and you know, from what I told you, one billion was sitting in the bank.

But profit, obviously profit is incredibly important. Call it different things. Call it margin. Call it EPS, fundamental issue: Are you making money? Common sense. Which would you prefer, company A, booming revenue but no cash and losing money, because expenses are more than the revenue. Or company 2: Half the revenue but lots of cash and big profits, because the expenses are so low. I mean, the answer is obvious. So you can have booming revenue, losing money, and your company is not that valuable.

This is an important part of the case. Obviously you know sometimes we sold hardware for a loss. The Government's basic position is we did it to fool the world. We did it so the

world would see our revenue numbers as skyrocketing.

The effect of selling hardware for a loss had the opposite effect. It increased the revenue, but the cash was reduced because we were losing money doing it, and our profit was down. It made the company not more valuable, but less valuable.

I have a simple example to make this point. Number 19, please.

Okay. Hypothetical. You're looking in the newspaper. For sale is a coffee shop. Advertised profit: $1,000.

Next page.

You visited the coffee shop and you see that there's a loss leader. To get people to come in and buy your coffee you're selling a delicious piece of cake for a dollar, but you're losing money on the cake. So the finances are profit from the coffee: $1,100. Loss from the cake: $100. Total profit a thousand.

Okay. So what does that mean? Next one.

You stop making the cake, just selling the coffee. Profit from the coffee: $1,100. Loss from the cake now $0. Total profit is more than when you had your loss leader.

You get the point. In a fundamental way, in a fundamental way the hardware sales that we did for loss made the company less valuable, and we would only have done it logically if there was an important business reason connected to it like selling our software.

All right. Let's talk about an important subject. How did the accounting go at Autonomy?

Finance Department, it was located in Cambridge. It was large. It was filled with professionals. It had many Big Four alums. When we talk about Big Four, there are now four big accounting firms. That's what I'm talking about with the four big alums, Deloitte being one of them.

And Sushovan Hussain, who was mentioned to you this morning, was the CFO and the head of sales. And he's a very, very important person in this case. And here's the Sushovan that Mike knew. He had an incredibly wonderful immigration story. He was 7 in Bangladesh, didn't speak a word of English, comes to England and had incredible success at school. Graduates with Honors and goes to Cambridge.

They will inevitably try to make Mike and Sushovan Siamese twins. They weren't. They went to high school together for a year, and then they were both at Cambridge. They knew each other, but were not close friends. Sushovan, after college, went into the oil industry, and then in 2001 came to Autonomy.

And here's the deal with Sushovan. He's absolutely brilliant, incredibly hard working, a perfectionist, he's innovative, always looking to advance the ball. He loved his work as an accountant, and he won awards. I don't know how many times he was selected to be the CFO of the year in London.

And more specifically, Sushovan as CFO in sales wielded

enormous authority at Autonomy, something like -- and COO as well. But he reported to Mike, there's no doubt of that. Mike was the boss. Mike was frequently referred to as the Bill Gates of the United Kingdom. Mike was the boss. They were not coequals. Never saying that. Never will say that.

But what is true is Sushovan made virtually all the accounting decisions that the Government challenges. We will see the evidence that the Government offers and determine which of the challenges they make that we'll fight off.

But what won't be controversial is Sushovan, not a coequal, but Heaven knows not a sycophant. He ran the accounting. He was strong, determined, and creative, and essentially taught Mike the bulk of what Mike knows about accounting.

And what I'm going to say next may be amongst the most important things I say this morning. Mike never, never had a reason not to trust Sushovan, not to believe in him, not to rely on him, not to believe Sushovan was trying his best to do right by accounting at Autonomy. I predict there will not be a shred of credible evidence that Mike had any reason to believe that Sushovan was doing improper accounting.

Steve Chamberlain was part of the accounting group, and he's represented by another friend of mine who is an excellent lawyer who is going to get up after me. And all we'll say about Steve Chamberlain is he was an utterly, competent,

honorable, decent guy. He was certainly not in Mike's inner circle, but we have nothing but positive feelings for him when we worked with him. And when I say "we," of course I'm talking about Mike.

Now, there was a board at Autonomy, and there was an audit committee at Autonomy, and this is significant. They, of course, had the ultimate authority for the company. They signed off on the accounts, and you will see that there was a real review process at Autonomy. Mike didn't collect golfing buddies who wanted to get away from the Mrs. and go to a board meeting. That's not what we had at Autonomy.

The Chairman of the Board for a long time was a guy named Robert Webb, one of the most prominent lawyers in all of the United Kingdom.

Chairman of the Audit Committee, Jonathan Bloomer.

The Dean of Finance and Accounting in the United Kingdom, Richard Perle. The former Assistant Secretary of Defense in the United States was on the audit committee for a while. These are superstars, not Mike "yes" men. I hope you meet them, and we're trying to make it happen. Vacations, distance, age, and illness perhaps are getting in the way.

But the point of this, the point of the board, and it's an easy one, and it's an important one. The very last people you would surround yourself with if you were in the middle of a three-year fraud would be these board members. That would be

insane. These people are smart. They look, they work, they work closely with Deloitte, and they were not "yes" men. You would not have them on your board if you were perpetrating a fraud.

And then there's Deloitte, one of the Big Four, more than 400,000 employees. Hire them, and I think it's fair to assume competence, integrity and independence. And they did Autonomy's books. They were a real presence at Cambridge. They knew software. Somewhere I got a number that over time more than 50 were assigned to the Autonomy account, and every quarter they came in in force and did the books, and they developed an open professional relationship, and Deloitte signed off on every financial statement at issue in this case.

There were open, vigorous debates on some of the issues we care about here. But the bottom line, if Deloitte said no to an accounting decision, it was no. And, you know, we heard this morning Deloitte was misled, not told everything. Every time Sushovan went to the bathroom, he didn't have to tell Deloitte that he was going to the bathroom. So we'll test every occasion when Deloitte says they were misled.

What I think you'll see, from the Deloitte witnesses and the Deloitte work papers, is that they knew the relevant facts about every important issue in this case. Indeed, we will prove to you that often the Deloitte auditors knew more about some of these deals than Mike did.

Now, Mike in accounting -- and, again, we're in the belly of the beast here -- not an accountant, not trained in accounting, not much interested in accounting. But of course he's not ignorant about accounting, I'd never say that to you. I couldn't say that with a straight face. He's a very smart guy and a competent CEO, but he had very little involvement with the day-to-day accounting issues, and very little contact with Deloitte, and very little contact with the audit committee on accounting issues. That's the U.K. model. CEO accounting, not verboten, but stay away.

Here's how it worked. Mike believed he surrounded himself and hired the best of the best: Sushovan, the audit committee guys, and Deloitte. And, you know, let Mike be Mike. Let him innovate. Let him push boundaries. Let him disrupt, and let him make money, and rely on the big three, his finance guys, his audit committee, and Deloitte to do their jobs and protect Mike and Autonomy from accounting harm.

You'll probably hear this from more than one person. Mike had ironically sleepless nights while he was a CEO of Autonomy, but not about accounting.

MR. WEINGARTEN: Judge, do you want to --

THE COURT: No, go ahead.

MR. WEINGARTEN: Okay.

All right. Let's talk about the victim in this case, HP. And it's fair to say why are we here? Two words, HP,

Hewlett Packard. And, yes, they're an iconic company. Yes, when the history of Silicon Valley is written, they'll talk about Hewlett Packard in the garage and the desktops and the printers. And they'll also talk about the hard times: The missed text swings, and the iPhone killing them, their stock collapsing, CEOs flying out the door, one scandal after another, just a horrible record for acquisitions, Compaq, the Ross Perot company, Palm.

They were in dire straights when Leo Apotheker from the German software company SAP was hired as CEO. They were in dire straights. He likened the situation at HP to a burning platform. That's a lovely picture of a platform in the North Atlantic in the middle of the winter with the seas roaring and workers are surrounding the rig and the rig blows up and starts on fire. So the choice for the workers: Get burnt up on the platform or jump into the North Atlantic in the roiling sea. That's how he saw his company when he was hired.

But he had a vision, and Mr. Reeves had that right. He wanted to turn HP upside down. You know, the low-margin hardware manufacturer, turned it into a software company, Longshot, made even a Hail Mary. But Leo Apotheker was determined to give it a try. And he knew Autonomy. He admired Autonomy, and for him it was all about Autonomy's technology.

And Leo also had a specific dream: To create HP software that could deal with both the structured and the unstructured

data in a commercially successful way, and he called it the Holy Grail. And, ironically, Mike shared this dream, Mike Lynch.

For him, the next big thing after IDOL was going to be IDOL not just doing unstructured, but going into the structured world and doing clever things with structured data that had never been done before, and he called that product, after a lot of thinking about it, a lot of experimenting with it, and a lot of working on it, he called it SPE, the product that Mr. Reeves mentioned and which will be, I'm guessing, an important part of the trial.

Enter Frank Quattrone. Frank Quattrone is one of the most famous bankers for tech companies. He's out here. He's a matchmaker, and he knew Mike and admired Mike and admired Autonomy. And he saw that for whatever reason Autonomy stock went down, and he called up Mike and said: You're vulnerable. You know, some big giant is going to want your software and is going to pay a ton of money, so do you want me to help you find alternatives or help you get ready? That was the start of the acquisition. Not Mike Lynch, oh, my God, my company is falling, apart. I gotta continue to cheat so I can sell it. That's not what happened.

Was Mike desperate to sell? No. He was perfectly happy where he was. He was buying companies, and the last thing you do if you want to get sold to a big giant is buy another

company, because it makes integration ten times harder. It's the very last thing you do.

Frank Quattrone said, you know, you're so attractive and your software is so hot, you'll probably get a 70 percent premium. Mike: Yikes, that's extraordinary. That's more than any other company has gotten on the London Exchange in years. A normal premium is 20 percent, not 70 percent. And Mike, with Frank, said, in U.K. law, there's no poison pill. If my shareholders are offered 70 percent, they're going to jump on it.

The attraction was all about synergy. I mentioned it in the beginning of my presentation. Why Leo Apotheker was so hot to get Autonomy was he saw amazing synergies to be created. Synergy as the combined value it was greater than the sum of the individual parts. And what Leo envisioned was the HP sales army selling IDOL, HP appliances hooked up with IDOL, and mostly the magical Holy Grail, a stack of software including IDOL that could deal with both the structured and the unstructured, and that's where he got the crazy numbers.

Number 17, please.

No, I have the wrong number. I apologize. 16. 16.

I wanted to make sure you didn't think I was making up that number. This is an important document, one of the more important documents in this case, to understand why HP bought Autonomy.

This is serious people. These are serious grownups putting pen to paper and saying what is the value of Autonomy? And the number they get, and it was not submitted to the board but they put it out, was $46 billion. That's why HP bought Autonomy.

So Apotheker and Mike meet three times. First two times it's just pleasant and they're talking about the world and technology. The third time they get down to business, and just coincidentally it's a time when the U.S. stock market is collapsing. It's one of those times when the U.S. Government defaulted. Our bonds were actually downgraded by a rating agency. The stock market collapsed, including Autonomy stock.

So Leo Apotheker says to Mike: Dude, you gotta come down on your ask. Look, you know, we can't support these numbers anymore. And Mike said no. A clear example that directly contradicts what you heard this morning. "He was desperate to sell. His company was falling apart." No, he turned down Leo's demand. Leo said: I'm going to walk unless you come down with your price.

Now, eventually there was a negotiation, and eventually there was an agreement, and eventually there was a 70 percent premium.

The due diligence that was done by HP or not done by HP is going to be a big battleground in this case, that's for sure, after what I heard this morning.

This was an $11 billion deal. HP got KPMG to lead the due diligence. It was remarkably short. The due diligence was 9 working days. They spent less than one day for every billion they spent. The due diligence was almost exclusively on public information.

Now, one of the reasons for that was U.K. rules, which are complicated, and you'll hear at trial, and also because HP was terrified that Oracle was going to swing into action and take Autonomy, and they didn't want that, so they wanted to move as fast as they could. And curiously, the Autonomy side offered up Hogenson, the guy we're going to have the battle over, the whistleblower or not, HP wasn't interested.

But here's the real -- here's the real deal. KPMG never finished their work. They were called off. Enough! And KPMG had not done all the work relating to revenue that they had anticipated they were doing. Meaning, had HP spent the time to do a normal due diligence, they would have found anything and everything they're complaining about today, including hardware.

Why the rush? Why was HP in such a hurry to -- why did they cut off KPMG? That sounds like a crazy thing to do. Because they had dreadfully bad news to report to the market in August 2011. They had to report that they were abandoning Tom, just a failure. They were announcing they were exploring a spinoff of its personal systems group, one-third of their revenue. They were disclosing that the quarterly earnings had

fallen short again, and they were lowering its revenue and earnings estimates for the full 2011 fiscal year by 14 percent. Dreadful news.

So their investment banker said: Unless you couple the dreadful news with something happy, something promising, the shareholders are going to throw you out. So guess what the story was? The story was Autonomy. The story was they were changing the world. They were coming at the world from the software perspective, and all would be well.

But, as fate would have it, that's not what evolved, and it didn't evolve because when Leo presented his synergy story to the board, the CFO at the time, a woman named Kathy Lesjak unexpectedly came out of nowhere and stuck him in the back (demonstrating) and said: Too expensive, bad deal.

Chaos ensues in the boardroom. Corporate warfare. It's going to be part of a course in every business school for the next 50 years.

Leo prevailed in the immediate, and the board eventually agreed to buy Autonomy for the 11 plus, and they ride with Leo for the moment. But of course it leaked that the story -- the story of the purchase of Autonomy leaked in I think Bloomberg, so Leo didn't even get the opportunity to tell the story in the way he wanted to.

And number 20, the stock just collapsed. Let's put it up if we can, number 20.

So that's Hewlett Packard stock the day of the announcement. And total panic, total panic on the board. "Can we get out of this deal?" No, the Brits are tough when it comes to deals when you sign a contract.

So instead of getting out of the deal, they fire Leo unceremoniously and they put Meg Whitman in. And Meg does a 180-degree turn and says, you know, forget this software. We're a hardware company. We make printers. But, you know, we own Autonomy now, and we pursue --

And so they had a choice: They could pursue Leo's dream and they could say yes, the synergies are real, let's make it happen or they could treat Autonomy like a stepchild. And guess which it was? Two big events. Meg Whitman fires Mike, so now the dream is surely gone. And Joel Scott, who you've heard of, for reasons having everything to do with him wanting to get into the HP world, comes running to the general counsel and says, oh, my God, there's so many things wrong with the company including hardware.

And Joel Scott is going to be a witness, so we're going to explore this one, too. But he says things to the lawyer, Schultz, at HP. But perhaps Schultz didn't know, because he was a lawyer, he's not the CEO, he's not the CFO, but Schultz was told things that HP knew. So the idea that the whistleblower showed up and the whole world changed is demonstrably false.

And HP needed someone to blame. They had an $11 billion debacle on their hands. The shareholders of course sued them. They looked ridiculous. At this point Autonomy, without Mike Lynch, was an albatross around their neck.

So they needed a scapegoat, and what they did is they began an investigation. And to their credit, and I say this in sort of a perverse way, they're way better off in finding a scapegoat than they are in integrating a company. It was relentless. It was exhaustive. Millions and millions of emails were searched. And I think if you did that in any public company in the universe, you'd find stuff. And the stuff they found, while putting relentless pressure on employees, past and present, using the carrot-and-stick approach effectively, the results were they found the issues that were articulated by the prosecutor today to you, and that's what happened.

In truth, in truth there is a routine business dispute between HP and Autonomy that has been transformed into an overblown fraud case, and that's why we'll be here for the next 8 weeks.

The real dispute, if HP stood up and said, hey, we're not crazy about this revenue, the composition of this revenue. We didn't know all of it, and we should have paid a little less or, you know, we should negotiate the price. Okay. Fine.

And we would say, you were crammed with the most

sophisticated lawyers, bankers, and financiers and accountants. You looked anywhere you wanted to look. Had you asked or had you looked, you would have found anything you wanted, and you got what you bargained for. You valued us at $46 billion and you paid 11, that's what we'd say. And that's why God made civil trials.

Almost done, Your Honor.

Couple of observations about how things may play out at this trial. What do you have to decide? Obviously you have to decide guilt or innocence. You're not going to work for Mike Lynch. You don't have to say "Would I work for the guy? Would I not work for the guy? Do I agree with his business decisions? Do I disagree with his business decisions? You don't have to do that. That's easy and obvious.

Credibility of witnesses, that's also for you.

Memory is a key thing here. Some of these transactions go back 15 years. You know, who can remember a transaction from 15 years ago? Does someone have specific memories of transactions 15 years ago? Find out who has refreshed them. Find out is it HP? Find out is it the Government? Find out if it's us. Those are valid questions.

Find out the vantage point that witnesses have of seeing things. Are they five levels down from Mike Lynch and asking questions about Mike Lynch? Do they know Mike Lynch? Are they speculating? Fair questions.

And think about the Stockholm Syndrome, and keep an eye open for this. There will be witnesses at this trial who worked at Autonomy. And, yes, it was a ferociously competitive environment, and, yes, they worked long hours, and, yes, the end of quarters were tough, but they loved it, and they were making money, and they were happy. And then all of a sudden the investigation started and 20 interviews with the Government later not so much. Stockholm Syndrome. Keep your eye open for that.

Constitutional protections, I couldn't even get close to what the judge did last week in describing them as eloquently as they can be described. Just reasonable doubt for one second, just an example of it. How was Mike Lynch going to get away with this? The day after Autonomy was sold to HP, HP got all Autonomy's books. All the accounting issues raised before you today were in Autonomy's books.

So, let's see, the smartest guy in the world is going to go to work for HP after perpetrating an $11 billion fraud, and the first thing he's going to do is hand over the books that will disclose that fraud. That's preposterous. That's reasonable doubt.

The charges, Mr. Reeves described them to you. There's fraud in every count. There's criminal intent that needs to be proved beyond a reasonable doubt. I know you know this, but let me say it because it's important. "Should have known," not

enough. "Must have known," not enough. He's the CEO, got have known. You can't substitute guesses and speculation and "should have knowns" for actual evidence. And common sense doesn't get you there either. I'm not suggesting in a million years that my friend Mr. Reeves was using common sense as a code for must have known. I'm not saying that at all, but don't you do it. Specific intent, criminal charges means you need actual evidence that this man specifically intended to do wrong.

The companion of criminal charges when specific intent is required is good faith. Good faith basically means pure heart. If you're walking around and your heart is pure and you don't believe you've done anything wrong, and the Court requires or the charge requires specific intent, you don't have it. Even if you had a mistaken belief: You know, I thought the transaction was fine. I honestly truthfully believed that. Somewhere along the line the law says it wasn't. If you're carrying that honest belief, that's good faith. The judge obviously will help you with his instruction.

Motive. Motive is not a requirement. It's not an element, but it's the first thing you're going to ask to yourself. Like why in the world -- why in the world would this man commit fraud, given where he was in the world? He had all the money in the world. He had all the prestige in the world. He had all the fame in the world. He had a multi-faceted

fabulous life. So if you're going to sell some hardware and lie about it and risk his life, his liberty, and his reputation? Please.

Keep an open mind. I'm echoing my friend here. They go first. We're going to chip away. We're going to cross-examine every one of their witnesses, and we're going to make progress. I don't promise you that, I guarantee you that.

And we're going to introduce witnesses, and here's a big one. We're going to put Mike on the stand. And defense attorneys don't usually say that, and in most trials you don't usually do it, but we are. I got a little choked up. We want you to know we think that helps us. We know how talented the lawyers are at this table. We know there will be extraordinarily effective cross-examination, as effective as it could possibly be, and we're ready for it. You're going to see a different world than you heard about this morning.

Look, at the end of the day, here's the deal. Mike Lynch is not Superman. He's not perfect. He's not a saint, but he sure as hell ain't no criminal. He ain't no crook. He ain't no fraud, and you're going to be satisfied of that.

And at the end of this trial, we're going to come back before you and ask for a verdict of "Not Guilty," and we can't wait.

Thank you.

THE COURT: Okay. Ladies and Gentlemen, we're going

to take our noon recess. We will be in recess until 1:00 o'clock.

Remember the admonition given to you: Don't discuss the case, allow anyone to discuss it with you, form or express any opinion. I'll see you at 1:00.

(Jurors exit courtroom.)

THE COURT: Okay. We'll be in recess until 1:00. Thank you.

(Luncheon recess was taken at 12:20 p.m.)

AFTERNOON SESSION **1:03 p.m.**

THE COURT: Please be seated. Let the record reflect all jurors are present, parties are present. Mr. Lincenberg, you may proceed.

OPENING STATEMENT

MR. LINCENBERG: Thank you, Your Honor.

Good afternoon, ladies and gentlemen. You'll recall my name is Gary Lincenberg. I'm the lead counsel for Steve Chamberlain.

Steve, can you stand up?

Steve will be sitting next to us here at the counsel table during the trial, and my job during this opening statement on behalf of Mr. Chamberlain is to talk to you a little bit about what the prosecutors did not tell you.

I approach every trial from the defense side, knowing what

it was like when I used to be sitting on the government's side where I used to feel like the jurors kind of thought I wore the white hat on the government's side.

Now on the defense side I sometimes felt like I had an uphill battle because there was a charge filed, and that charge let's people think that there must be something there, despite the number of times that the judge has -- will instruct you that our clients are innocent unless proven beyond a reasonable doubt.

But I know that I have my battle cut out for me, and I can't win that full battle in my opening statement, but what I can do is give you a little bit of an insight into why what the prosecutors are suggesting about Mr. Chamberlain is not accurate.

And what I'm going to do at the beginning is lay out about eight bullet points. Now, different people take notes different styles; you'll do whatever you want to do during the trial. If you're going to take any notes during my opening, I would suggest you just take notes on these eight bullet points at least for starters so that you can keep track of them.

There's a juror with a question, Your Honor.

THE COURT: Do you not have a pad?

UNIDENTIFIED JUROR: I can't hear you.

MR. LINCENBERG: Speak up? Let me pull the microphone higher. I'm trying to use this. Is that better?

UNIDENTIFIED JUROR: Yes.

THE COURT: Can you all hear?

MR. LINCENBERG: Thank you for letting me know.

THE COURT: And thank you very much for doing that. If somebody says something you can't hear, just raise your hand. Appreciate it. Thank you.

MR. LINCENBERG: Thank you for letting me know.

So if you're going to take notes -- and that's up to you -- I would suggest at least jotting down these eight overriding themes that I think are going to be important throughout this trial as you evaluate the evidence as to whether or not it is evidence of proof of my client doing something criminal, as they've alleged.

The first point to keep in mind is that Steve did not decide what sales to make.

Now, you've heard some evidence that there were different types of software sales to companies called "VARs" or, for short, "resellers" and the government's view that those sales were done near the end of the quarter in order to help meet revenue recognition targets.

And you'll see lots of evidence that those sales are valid sales, but what I'm suggesting to you is, it doesn't matter at the end of the day whether you like those sales or not in terms of evaluating my client because Mr. Chamberlain was not a salesman. He wasn't part of the strategy of whether to sell

hardware, whether to sell something to resellers or not. He generally learned about a sale after the sale was completed and files would be sent to the finance department, to the accounting group for accounting. Every so often he'd have a little input before that if somebody wanted to -- a salesman had a question about structuring something but, by and large, he had nothing to do with these sales.

So if the heart or part of the heart of the government's case is that Autonomy was selling to certain resellers or selling certain hardware in order to increase their revenue to meet targets, whatever the good motive or the bad motive or whatever it is, it has nothing to do with Mr. Chamberlain. He's not the guy who's deciding what sales to make.

The second point is that Mr. Chamberlain was not making the final accounting judgments. Now, was he an accountant? Yes.

Did he manage folks in the Cambridge finance team? Yes.

Were there normal transactions, the 90, 95 percent of sales that aren't at issue here where documents came in and they were sent along and there's really no dispute about it and either him or somebody who worked in that office gathered paperwork and sent it on? Yes.

But the deals that the government is going to focus on are those deals where revenue recognition was arguably a closer call. They've pointed out hardware sales, sales to resellers;

ones that they're focusing on. And where it was particularly a harder call -- and many of these sales involved the exercise of judgment -- those decisions were made at the Autonomy side by the Chief Financial Officer, Shushovan Hussain.

Third overriding point: My client's work was done in realtime. And this is a real challenge in a trial in 2024 when witnesses are coming into court and they've been interviewed 10, 20 times by HP's lawyers, by the prosecutors, and they're putting together this or that or what they later heard and it influences what they have to say. Mr. Chamberlain didn't have the benefit of any of that in his work.

If, on the 1st of January of 2010 some file comes to the finance team and it's their job to gather the evidence for revenue recognition, that's the evidence that is available. Whether some different deal took place six months later, whether nine months later there was a feeling that, you know what, that customer is not paying, that is not information that is available to the accountant at the time. And you're going to have to compartmentalize some of this testimony and ask yourself as you're listening to it: What was the realtime information available to Mr. Chamberlain?

The fourth point was that Mr. Chamberlain was, at all times, open and honest with the auditors. Now, this is something which is going to be a part of their case, and the government will contest. They have to contest it to make their

case because on the transactions that they're going to talk about, the auditors approved the transactions.

So if you want to claim that somebody was engaged in fraud at Autonomy, you have to say they lied or withheld something from the auditors. And I would suggest to you that the evidence will show in this regard a couple of things. First, if there was something that the auditors did not know about that might have been material to them, Mr. Chamberlain didn't know about that. And I'm going to give you an example of that as we go through our opening statement.

There's other times when the government, after their search -- as Mr. Weingarten noted, 10 million emails that they go through, and they're going to find some email and they're going to ask one of the auditors: Well, if you had seen this email, you know, would that have been relevant to you?

And you're going to hear evidence that emails are not what goes into audit files and so forth and so on, and the accounting decisions are based upon the documentation that goes to the finance team and the auditors for the deal.

He was always open and honest with the auditors. And I would suggest to you that as well, the people who worked in his office with him in Cambridge were open and honest in their dealings with the auditors.

Next is that the accounting decisions were approved by independent auditors. And it's really important to keep in

mind that these auditors are independent. They are -- they are obligated to approach accounting revenue recognition decisions with doubt, with skepticism, with the idea that, you know what, that CFO Shushovan Hussain looks like he may be closing this deal for such and such a motive; I'm going to scrutinize it more carefully and make sure that the Is are dotted, the Ts are crossed. That's their obligation, and they approved all of these decisions at issue.

Next you heard some comment in my colleague Mr. Reeves' opening statement about phone calls that Mr. Hussain and Dr. Lynch would have with analysts at the end of each quarter where they talk about this is how the company is doing and stock-market analysts could ask various questions. Mr. Chamberlain never spoke with those analysts. So I believe the evidence will show that the information that went to those analysts was accurate and honest, to the best of the ability of the folks who were dealing with them, but whether honest or not, has nothing to do with Mr. Chamberlain.

Next, you heard that this is a case that, at its core, is a case about Autonomy, Dr. Lynch and selling Autonomy to Hewlett Packard. And you heard discussion from my colleague Mr. Weingarten that a lot of this conversation took place beginning as early as, I think he said, January of 2011.

My client, who was not a part of the core management team, didn't even know about that. He wasn't -- he didn't learn

about a sale to HP until the sale was essentially agreed to in late July. And he really made no representations to HP. He certainly made no misrepresentations.

Finally, what the government didn't tell you is sort of the story behind the story of a trial. And it's kind of hard, frankly, for the defense to bring this out because the government will march into the courtroom witness after witness who is going to be -- and they're going to be pretty polished. These are people who have spent dozens and dozens of hours preparing their testimony in interviews with the FBI and the U.S. Attorney's Office, many of them initially in interviews with the Hewlett Packard attorneys who were interviewing them as they were building their case to claim fraud and try to undo their deal with Dr. Lynch. And so there's a story there that's important to try to picture and understand because people who come in here and testify feel pressure.

There was a name -- Matt Stephan was mentioned as one of the witnesses. Matt Stephan was somebody who worked in the finance team department, and he's going to be a witness who's going to come into court and provide some testimony favorable to the prosecution in this case.

I would suggest to you that what he's going to come into court and say is going to be a very different picture of who Matt Stephan was and what he was saying back at the time he was working at Autonomy.

But what happens when you're a guy who's living in Australia, you happen to be in Washington, DC, and you have the bejesus scared out of you because you learned at a knock on your hotel door that there's FBI agents at the door and they're looking at accounting and: Mr. Stephan, you can play ball with us or you can have the potential danger of incurring our wrath. And different people respond to pressure in different ways, and we'll get into the particulars of different witnesses, but the story behind the story -- because remember, this case is old. These people have been hammered on for years and years and years and the story behind the story is going to be really important, and it's something that the prosecutors didn't tell you about in their opening statement.

You're going to see that my client performed his job in complete good faith. Now, I don't have the burden of proving that to you, but I will, and the evidence will show that to you. I don't have the burden of proving that my client is not just not proven guilty but that he's innocent, and I will do that because my client, Steve Chamberlain, is innocent. He had no intent to defraud anyone, and his good faith will be demonstrated by the time we get to closing statements. He is an innocent man.

Let me take a step back and talk to you a little bit about who Steve Chamberlain is.

Steve Chamberlain was born in an industrial town of

Birmingham in England. He was raised by his fine parents, Grenville and Liz, who have flown over here from the United Kingdom to lend their support during his opening statement.

Mr. Chamberlain lived in Birmingham until the age of 11 when his father Grenville took a job at a scientific instruments company in Cambridge where the senior Mr. Chamberlain worked for the next 40 years.

His mother raised Steve and Steve's two sisters while also working as a social worker, and Steve's parents continue to live in the same three-bedroom home where they raised Steve and his two sisters.

Steve went back to the University of Birmingham where he got a degree, and he was the first person in his family to ever get a college degree.

He married his wife Karen in the green dress who is in the courtroom here, and you will see Karen at different times during the trial. Karen will not be here for the entire two, three months of this trial because she has a job. She works in compliance and she does a lot of work for an orphanage and can't spend the entire few months here. She'll be here as much as she can. They have two children. Their children are in their early 20s, and they're back in the United Kingdom.

Now, after graduating from the University of Birmingham, Mr. Chamberlain had several different jobs. I'm not going to discuss every job he had, but there's two primary jobs that are

relevant here.

First, he spent about six years working for a big four accounting firm. The firm later became known as Deloitte. And you'll recall that's the firm that were the auditors that were auditing Autonomy.

And you'll see in this case that a lot of the people who went to the finance -- went to work in finance later at Autonomy came from Deloitte. And you'll hear from them that when they went to Autonomy, they didn't see anything different from what they had seen at Deloitte and they came to Deloitte because they believed that Steve Chamberlain was an honest, decent man who they had been working with and they wanted to work with in person.

Now, today Steve Chamberlain is 51 years old. He worked -- he's worked at Autonomy from 2005 to 2012. And since 2011, 2012, he has spent the last 12 years caught up as a pawn in a battle between titans, a battle between Hewlett Packard and all the power and money that they brought to the table and Dr. Lynch and he hopes, after this long wait, to be able to clear his good name in this trial.

Let's talk about Autonomy's core management team.

Now, when I show you this chart, you may recall that my colleague, Mr. Reeves, showed you something similar but a little different. The top part of the chart was the same, it had Dr. Lynch, Andy Kanter, Shushovan Hussain and Dr. Menell as

the core leaders of this company. That part is the same.

Below it I have these three gentlemen: Joel Scott, Stouffer Egan and Michael Sullivan. And the reason they're there is because these were the three individuals who were basically the leaders of Autonomy in the United States, and they were the ones who were very involved in making the sales decisions that are at issue in this case. Mr. Scott being the United States-based general counsel and chief operating officer, Mr. Egan being the US CEO, and Mr. Sullivan being the head of sales.

Now, what I want you to focus on here is not so much the titles. People can have different titles. I believe that Mr. Reeves mentioned that this person who claims to be a whistleblower, Brent Hogenson, had a title of CFO. He at one point got the title of United States Chief Financial Officer. He's not on here because he wasn't making the decisions on sales or how to pursue the accounting decisions or providing for the -- to the finance team or to the Deloitte auditors the commercial rationale for the deals and so forth.

I also don't have on here the board of directors. The board of directors are important, they're really relevant to this case, but they're really not the people who were making the decisions that are involved in this case.

Now, on the government's slide -- and I'm not sure we can flip to that, but I'd like to just put back up if you're able

to flip it to the government's chart that they had showed. Yeah.

So you'll notice that in the government's chart -- and they don't call them the core management team or decision-makers, but they still wanted to stick Steve Chamberlain in so that it looked to you like there was this prominent position.

Now look, he did the work he did and you'll see that work and you'll review it, but he is not part of the senior management of Autonomy by a long-shot. His compensation was maybe a 1/100 of Dr. Lynch, maybe 1/30 of Dr. -- of Mr. Hussain or Kanter or Menell, less than Sullivan, Egan, Scott.

He earned about 140,000 pounds a year and then he had some bonus that went with that, which -- and he would earn a little more than that, but he wasn't making millions here.

And the government also just seems to have willy nilly listed five different people here. I think maybe they listed because they were going to call them as witnesses, and one of them is Matt Stephan, who, in no way, had any leadership position. He was a person who, for a while, was in charge of the revenue team. His testimony is relevant, but it's not the core management team.

And if we can go back then to my slides, please.

It's important to keep in mind.

Now I want to make one other comments about Matt Stephan.

The government, Mr. Reeves, stated to you in his opening that Matt Stephan left the company when he got too fed-up justifying Autonomy's deals, at which point he left. Mr. Reeves said Matt Stephan left the company when he got too fed-up justifying Autonomy's deals, at which point he left.

I want to put a little checkmark if you're taking notes and keep that in mind.

Matt Stephan will come into court and he'll testify that beginning in early 2010, he started having questions about some of these sales and Mr. Chamberlain had questions about some of these sales.

These guys are working in Cambridge in a back-office finance team. They don't know why there's so much effort to close a deal at the end of the quarter. Frankly, it's not their business, to some degree. They don't know necessarily why or they may get an explanation of the commercial rationale for hardware sales, but it's not their business.

What they know is that when these deals come in that are closer calls that there's going to be a lot more work on their end, all in this jammed three-week period at the end of a quarter. It's a pain to deal with and it's going to be scrutinized by the auditors and they'll gossip in the back room: I don't like these deals, whatever, it's a pain, you know, the auditors are pushing, they want to talk to the CFO. That type of conversation happens.

Matt Stephan, according to Mr. Reeves, left the company in around January, February, 2010, because he got fed-up with it.

Let me read to you a couple of emails of Matt Stephan from first -- September of 2010, eight months later. This is an email to -- he's actually sending it to a woman named Poppy who worked in the finance team, a friend of his who worked in the finance team, and it's a draft email to send to Steve.

"Hi, Steve. I have a proposal for you to consider" -- blah, blah, blah, blah -- "I would like you to consider transferring me full-time to San Francisco to run the revenue teams for the group" -- blah, blah, blah, he goes on -- "obviously such a change would have an impact on my existing duties in the UK. Don't worry. To ensure that you aren't impacted at the quarter end, I'd be happy to come back to the UK for a couple of weeks each quarter once the US books were closed to help us get through the audit."

Very different -- Matt Stephan's words eight months later -- very different from the picture that Mr. Reeves mentioned to you. And I raise that not because it's some big piece of evidence here. It's because I don't want you to give this benefit that they have the white hat and, therefore, if they're presenting evidence, that must be right; because it's not. That statement is completely contradicted by the evidence.

Mr. Stephan writes another email in February of 2011, and

this is around the time when he's leaving Autonomy, but he's leaving to move back to Australia. He's married, there were marital difficulties, the wife wanted to move back to Australia, so forth and so on -- you'll hear the story -- and he writes an email.

February 2011 "I'm sorry to say that I've decided to call it a day on my time at Autonomy and my time in the UK. It's been six good years in the UK, but it feels like the right time to go home."

Writes another email. "If you'd be interested in accepting my help to smooth the transition, I could work remotely as a contractor from Australia."

Two different sides of the coin.

So just because you hear something that comes out in the government's case or the prosecution's opening, please keep an open mind and wait until you hear the full story.

Now, the government, Mr. Reeves, also mentioned in his opening statement that while Dr. Lynch earned -- I think he said -- $500 million at the sale to Hewlett Packard, he said that Mr. Chamberlain -- it was dollars or pounds, I can't remember -- that Mr. Chamberlain earned 2.5 million. And not the biggest point in the world. The idea is, though, that he wants to jazz you up so that you think there's this big motive or something, but what he's saying is not true.

And what I put on the board that I quickly pulled out

during the short lunch break was the pay stub, which shows that when it came to the share options and then you adjust it for the share options adjusted, there's about 900,000 there. And then if you look after taxes, the 900,000 becomes about 466,000, not 2.5 million. So you'll see this evidence in this case, but if you were taking a note about that amount during the prosecutor's opening, I suggest you revisit your pad and put three question marks next to it until you hear the evidence.

So let's talk about the finance department for a moment. Now, I've broken up here on this chart -- or it wasn't my chart, but there was a chart prepared at some point of nine different areas of Autonomy: Sales, legal, operations, technology, subsidiaries, investor relations, marketing, research and development, and finance.

Mr. Chamberlain had no role in the first eight.

You heard about Mr. Hussain, who was not only the CFO but also the head of sales. Mr. Chamberlain had nothing to do with sales.

So let's talk about the finance department for a moment. The finance department was led by Shushovan Hussain. He had an office in Cambridge, but he largely worked out of London. London is about -- I'm going to get this wrong, but I think it's about 80 miles or so from Cambridge, and Mr. Hussain generally worked in that headquarter office for Autonomy in

London.

There was a finance team in Cambridge of which Mr. Chamberlain was in charge of that finance group, and that finance group basically sat in an open floor plan. He didn't have some big fancy office in the corner, wasn't closed off from anybody. Basically at different times there may have been eight, ten, twelve people working in that office doing different functions, and they all sat, essentially, on top of each other.

And you're going to hear testimony from people who sat at some of the desks I popped out. I didn't put their names in this because they moved around at different times, but essentially those are the witnesses, people who oversee costs, people who oversaw revenue and the like.

And the reason I put this graphic up for you is because this open floor plan was also emblematic of the way they did their accounting work. They were very open. They talked back and forth, they'd get up, they'd go over to somebody else's desk, they'd yell across the room; very open, working as a team.

And during the audit process when the Deloitte auditors would descend on the offices in Cambridge, the finance team offices, they had open access to this. They were given a conference room so that they could work privately, but they also had open access and worked around this room.

And the finance team did their work pursuant to the United Kingdom's accounting standards or principles that apply to public companies that are listed on the UK or the FTSE Stock Exchange.

So you're going to hear all this discussion about GAAP, the US principles, which are more rules-based, the UK standards, which had a little bit more judgment and discretion built into some of the decisions.

All you need to know for right now as you judge Mr. Chamberlain, keep -- understand that he performed his job based upon the only standards that he received education on and that he was a chartered accountant to be able to perform, and he should be judged accordingly under those standards.

Now, part of the story behind the story -- the story behind the trial is also that Mr. Chamberlain had on his plate and his team had on their plate a lot of different functions. So while 90 percent of the case or 80 percent is going to be dealing with revenue, that wasn't what the majority of his time was spent on.

You see where I wrote integrations? Mr. Chamberlain, in particular, spent a lot of time when, for example, Autonomy purchased that company Interwoven. There was a lot of time for him to help manage the accounting side of that integration and work people into the Autonomy ecosphere, and he had to manage the people and there was bookkeeping and costs and taxes and so

forth. Obviously taxes not at issue here but a big part of the time that kept Mr. Chamberlain incredibly busy.

Now, there's also another group of accountants, and you'll hear some witnesses who I've bucketed as regional accountants. You'll hear some testimony from some folks who worked in accounting in the United States and the people you're going to hear from are people who came over from one of the US companies that Autonomy bought, in particular people who came over from this company Interwoven, all right? And we'll get back to them, but I wanted to just show you what the finance team generally looked like.

And when you look at and go back to that original point and ask the question who are the accounting decision-makers, the accounting decision-makers at Autonomy, first, second and third, are Shushovan Hussain. He's the chief financial officer. And particularly when we're dealing with these areas where there's areas where the auditors are raising questions or where there's questions of judgment and he is -- he is the one who is making those decisions.

But no decision is final until it's approved or rejected by Deloitte.

Now, Mr. Reeves made a point of saying to you: Autonomy is responsible for their accounting. They are responsible for their accounting, but it would be wrong to ignore that their accounting goes nowhere unless it's approved by Deloitte. So

it's not just Autonomy that's responsible for the accounting. It's also Deloitte. If they come back and reject something, it's not going to go well and it's not going to be what the final accounting numbers are.

So let's look at Deloitte for a moment. So Deloitte is this massive accounting firm and just for Autonomy they had dozens of people who would be involved. You had people called senior auditors who would swarm in for several weeks at the end of a quarter to do reviews; or, if it was at the end of the year, for an audit, and would be scouring the books and working with the folks in Cambridge. They had a level above of that of audit managers, they had a global audit manager. They had a whole level of people -- technical assurance.

So, for example, Mr. Reeves mentioned to you this product SPE that was developed by the company and they're going to raise questions about that product and then -- and the accounting relating to it. Deloitte has a person who has technical capability who can and did meet with the people at Autonomy who are the research or development or chief-technology-officer-type folks who can answer those questions.

Mr. Chamberlain can gather information from them and send it on to Deloitte, but he can't answer the technical questions. If there's a question that the auditors have of whether something is a fair value or what the purpose of it is, the

auditors will give a call to the chief technology officer. And it was open book for them to talk to people throughout the company. They weren't just confined to deal with the people in the finance department.

You also have here something called an "engagement quality assurance partner." This is because Deloitte, the number one, two, and three things that are important to them are their reputation. It's an organization with integrity, and they have a partner who's just devoted to looking over the work of others in their own firm and make sure it's of high quality.

They have somebody called an "independent review partner," somebody who has nothing to do with Autonomy but is also going to look things over to make sure that Deloitte is acting with independence and professional skepticism. All these people are demanding documents, asking questions, reviewing things.

And then you have the most important person, which is the partner, because things make their way up to the partner and when there's particular issues that partner, if he has issues with the company, will generally get ahold of Shushovan Hussain and test them with Mr. Hussain.

So Deloitte will either approve or reject of a deal and then there's a whole another layer of review and that next layer of review is the board of directors. And as my colleague mentioned, the board of directors has accountants who are the top guys in the field to also deal with any questions that the

auditors have, deal with issues and make sure that the accounting is being performed properly.

Now, if we take a step back and you say: How does this impact Mr. Chamberlain who's doing his work in the Cambridge finance office, when do you work and your CFO says this is a correct judgment and the auditors approve it and the independent board approves it, that gives you comfort that the work that you're doing is proper and that you're performing your job in good faith.

So how do you test for whether or not accounting is being done properly on a sale under IFRS, the UK standards? There's several factors. I'm going to highlight three that the government has suggested are issues in their opening statement. The first is transfer of risk. And transfer of risk basically means that the -- if somebody signs a contract to buy something, are they putting themselves on risk? They owe that money, there's a contract; in selling it, are they giving up the product.

And you look to different things. The first step is to look at the purchase order or the sales agreement. And what the finance team will look at and what the auditors will look at first is, is there a measurable amount? We're paying a dollar for ten widgets. Okay. We have a quantity and a price. Are there any side agreements? If there's a side agreement then risk is not being transferred. Is there generally

exchange of the benefits of risk and reward?

Now, one issue that comes up in this case is the fact that Autonomy was selling product and recognizing revenue when they sold it to one of these reseller companies. We'll use Capax as an example that was mentioned by the prosecutors. And some people are of the view that if you're selling a product to Capax but it's intended that Capax will resell it to Eli Lily, for example -- big pharmaceutical company out of Indiana -- that maybe you should only -- maybe you should only recognize that revenue once it's resold to Eli Lily. That's not what the law provides for under IFRS. The law under IFRS says you can legitimately have an accounting policy that says that if you meet the criteria for revenue recognition that when you sell that product to the reseller you recognize it.

I put up an example here that is not perfectly analogous, but I know some of this accounting stuff can be dry, and so I wanted to at least have a little fun with this.

Take a farmer who sells potatoes to McDonald's. Now, McDonald's wants to turn those potatoes into French fries and resell them to an end-user, a person who comes in and is a customer. But whether or not McDonald's sells those French fries or throws them out or the like, the sale under IFRS can be properly recognized when the farmer sells the potatoes to McDonald's.

Now, the government discusses a little bit here that

Mr. Hussain had a motive for selling to these resellers just to hit revenue targets at the end of the quarter. And you'll hear a lot of testimony about that. A point that I want you to keep in mind at this point is that Mr. Hussain's motive or a salesman's motive is not really a factor that the finance team takes into account under IFRS.

There's no motive factor that says: You know what, on December 26th Macy's is going to lower the price of sweatpants by 50 percent and some guy in the accounting department says, "Why are they doing that? They could get a hundred dollars instead of $50 for these sweatpants."

That's not the role of people in finance. It's the role of people in sales or at the head of the company, whoever is making those strategic decisions.

The second factor is delivery. Now, the delivery means that you have to release control of the product. If you're dealing with software, this is easy. Company pushes a button and the software licenses are sent over to the customer.

Mr. Reeves brings it up in the context of hardware. In hardware you have to prove that there was delivery of the product within the quarter in order to recognize the revenue. And you'll see that delivery can be defined many different ways. Delivery can be when it leaves your warehouse or it can be when it arrives at the customer's warehouse or it can be after the customer signs off that I've inspected the hardware

that has come in and been delivered or it can be in a warehouse where there's a consignment arrangement, all sorts of different things that come down to whatever the contract says, but that's one of the factors.

And the third is collectibility, and collectibility is a question of whether or not, in your judgment, it's more likely than not that the customer is going to pay. So all of these factors are done, an accounting decision is made and then it's reviewed by Deloitte. And you'll see deal after deal where this process takes place, Deloitte does their review and they approve of the accounting for the sale.

So what I'm next going to do is take you through a couple of sample deals and I'm going to use these deals as samples so you have a little bit of an idea of what the finance team is actually doing on a basis.

So let's use an example of a sale of software in the fourth quarter of 2009 to Capax. Now, the government has two problems with this sale and the accounting in their 20/20 hindsight analysis. The first is, they say there was no transfer of risk because there was a side agreement between the salesman and the guy at Capax. And the second is, they say this wasn't really collectable. There wasn't sufficient evidence that Capax had the money, could afford to pay it. And they go one step further, they say in order to help with collectibility that that was the reason why Autonomy had also

bought services from Capax.

You recall Mr. Reeves said that Capax was a company that provided support services, maintenance, and things like that to service the people who buy Autonomy's product.

So let's go through and I have a picture of an orange file because there were actually orange files that the paperwork was kept in, in the Cambridge office.

So let's first talk about transfer of risk. First thing you do is you look at the sales agreement and the sales agreement states in it specifically that "This agreement sets forth a complete and exclusive agreement . . no alterations, modifications or additions to this agreement shall be valid unless made in writing."

So the contract is the primary piece of evidence that says that this is the written agreement and the only agreement that governs this sale, and it says that there cannot be any side agreements.

The next thing you have is verification. The auditors don't just look at the purchase order or the contract. They want an independent confirmation letter from the customer. So in this case that I have on the screen you have Capax sending an audit confirmation letter to Deloitte that there are no side letters or other agreements. That's the evidence that goes to Mr. Chamberlain or the people in his finance team who are dealing with this sale.

But the government says there's another thing that took place. They said there were side conversations between a guy named John Baiocco who is going to testify later this week, I believe, who worked for Capax and Stouffer Egan, a salesman at Autonomy. And you're going to have these guys come in and say: You know what, I, Stouffer Egan, talked to Baiocco and he agreed to sign the agreement but I told him don't worry, we're not going to make you -- leave but holding the bag if you can't pay.

And the government says that's a side agreement. That's an oral agreement which undercuts that first factor of transfer of risk.

Now, let's put aside for today whether it really is a side agreement or whether six months later somebody going to a customer and say: Hey, I'll work with you, I'm not going to make pay for it until you get the money in is really a side agreement doesn't matter to me.

What matters to me and Mr. Chamberlain is it that this is concealed from Mr. Chamberlain.

Egan and Baiocco are not telling Mr. Chamberlain of their oral side conversations. And it's concealed, by the way, not just from Steve Chamberlain, it's concealed from the whole finance team in Cambridge.

Chamberlain is, himself, not necessarily involved in all of this. Sometimes it's the person in charge of the revenue

team, a Matt Stephan or other people who took over that function.

And in fact, it has to be concealed for Mr. Chamberlain if Egan wants to accomplish his goal if his goal is to get this sale recognized so he can earn his commission or whatever the motive is. If there was an oral side agreement and he told the finance team, it won't get approved. So when the auditor later comes in and the government says Mr. Welham -- Mr. Deloitte, had you known that there was an oral side agreement would you have still recognized the revenue on this or approved it, he would say no, that would have been material to me.

Well, ladies and gentlemen, guess what? That also would have been material to Steve Chamberlain.

And the reseller's actions corroborate what is obvious, that the finance team in Cambridge did not know about whatever oral conversations took place.

And you see that in various emails. I've pulled one to give you an example of it.

Here's this guy John Baiocco writing to one of his colleagues in December of 2009. It says, hey I'm getting harassed by Chamberlain, meaning the collections folks at Autonomy are calling Capax to pay money that they owe that is past due.

Now, why would Chamberlain be harassing him if he knew they didn't really have to pay this money? He's harassing him

because there's an agreement, it's an agreement in writing. He doesn't know whatever he and Egan may have talked about, and Capax owes the money. He says I don't know what to tell. According to him, we owe you around 6 million, and he's getting nervous. That's the type of reseller action that slows that Mr. Chamberlain is not in on whatever agreement, oral or not, that they may have going on with Mr. Egan. It was concealed from my client.

So the second aspect of that Capax sale that the government challenges is that the money really wasn't collectible.

Now, finance's job is to go out and gather evidence regarding collectibility. Remember that's one of the factors that has to be satisfied under IFRS in order for revenue to be recognized.

And here's an example of what takes place. I use an example that my client's name is on. In January of 2010, he writes an email -- and here he's emailing with Egan, who's the salesman and Hussain who is his boss -- about Capax history and collectibility because one thing you do is, you look at the history of payments from Capax. And what's interesting in here is he says, "This is what we need to meet collectibility. We need to show that Capax can pay $8 million next quarter even if they don't get paid by Eli Lily."

So the idea was Capax was taking on this risk because they

believed that they could resell the license to Eli Lily. Chamberlain is saying, hey, you've got to show -- we have to show collectibility whether or not they ever get paid by Eli Lily. That's the way the finance team approached their job.

So the next thing that the government does, or the next thing that we see happen is, Deloitte reviews all of the evidence in that orange folder, they ask whatever questions they have. If there's an issue that they want to raise with the CFO Hussain, they do so, and they find that -- they conclude that the deal is recoverable.

These are audit work papers. Audit work papers will be one of the types of documents you see a lot of in this case, and they approved the deal.

Now, the government goes one step further. They say that ah ha, but the only way you made it collectable is you had this little thing where you had these fake invoices to buy services from Capax, so you're sending them the money so they can send them back. That doesn't meet the test of collectibility.

Now, let me take a step back first and say it is not unusual for companies to buy and sell with each other. It's not at all unusual in the technology world for a company like Autonomy that sells certain software to also purchase services or maintenance help from these resellers. That's what they're sort of in the business to do, these resellers, they're software sometimes, these resellers.

And the other thing to note is as this is coming in is, there's others in the finance department who are primarily involved in reviewing this work. But let's go through this particular example just to run through one of these software sales.

So Autonomy contracts with Capax to pay money to Capax for Capax to provide support services.

Remember what Mr. Weingarten mentioned to you, that in 2009 we're coming out of a recession. The Wall Street banks are getting hit with a lot of litigation and there's this need for Autonomy to be able to not only sell their product but provide the support services. And the powers that be at Autonomy decide that it would be helpful to bring in a contractor to assist with that. Okay? That's fine.

And in realtime in 2009, you have one of the salesmen who is dealing with Capax here, and he is advising that we have a legitimate contract with Capax and Capax is performing the work that they're supposed to be performing and that's the information that makes its way to the finance team. Again, that has to be the information that makes its way to the finance team if the people who are doing this -- this is a caricature of one of the witnesses, Mr. Sullivan -- if they're going to accomplish their goals.

But out of the other side of his mouth, Mr. Sullivan is going to come into court in 2024 and we expect that he's going

to say Capax was never performing this work.

Again, you can decide whether Capax was or was performing the work, what the true purpose of the contract was, what the value of it was. I think they'll show that the evidence is convincing that there was a need for the Capax services, but it has nothing to do with Mr. Chamberlain.

The finance team is informed that this is a real contract for services and the work is being performed. So the fact that in 2020 hindsight somebody can come into the courtroom and talk to you and say: Hey guys on the jury, work wasn't really being performed, that doesn't help you decide what was in my client's state of mind. You have to decide based upon the evidence in realtime what was told to him in January of 2010, and this part on the right side was concealed from the finance team.

So let's fast forward about six months from the sample Capax-Eli Lily deal and talk about Mr. Hogenson. So Mr. Hogenson, you'll recall, is this accountant in the United States. And Mr. Hogenson had come out of Interwoven and he had been doing all of his accounting under US GAAP accounting standards and they had certain issues on how they recognized a sale. So, for example, I think that Mr. Hogenson is going to say that even when we sold to a reseller, we only recognized the revenue if there was a contract at least in place to sell it on to an end user. Fine. That's what he was used to and that's a more conservative approach.

Now, in early 2010, the former Interwoven accountants such as Mr. Hogenson, are now working for Autonomy. And at Autonomy they're now seeing this and saying, wow, that's not the way we do did it or whatever in this integration process and they're raising questions. And Mr. Hogenson raises questions and first he sends a letter to the CEO Dr. Lynch. And in the letter he raises questions about a few different deals. And with regard to Capax, the sale that I talk about just to play it through, with regard to that deal, he basically says "If Deloitte reviews the Capax-Lily files and they can answer these nine different questions I have and say that it was properly recorded, I would consider this issue closed." Makes sense. This is new to him. He wants to make sure that Deloitte has reviewed it because it's not his job to deal with the auditors and if he doesn't want to just trust Mr. Chamberlain or Hussain or whoever that this is all getting to Deloitte or it's just very different for him and he wants to raise the questions, fine, raise them. So he raises them and Deloitte reviews them and Deloitte brings in another group of independent people to join the folks who are reviewing Mr. Hogenson's allegations because from Deloitte's point of view this is serious.

This is a whistleblower dealing with accounting issues that we, Deloitte, have signed off on and we're going to dig in and not just accept this and rereview it.

And they prepare a report to the board of directors of

Autonomy dealing with it and they note, first, that with regard to this Capax-Lily deal that back when it was audited in January of 2010, we concurred that it was appropriate to recognize revenue. We've now investigated it again. We've looked at all of these different questions that have been raised by Mr. Hogenson and we come to the same conclusion even under heightened scrutiny. "The determination of the revenue recognition on the Capax sale is . . . consistent with what our understanding was at the time," and they again approve the transaction. And this was for several transactions that were raised by Mr. Hogenson, some dealing with purchases from customers, some deal with revenue accruals, some deal with sales to resellers. I gave you the -- in detail the example of Capax-Lily, but they did this review of several different questions that Mr. Hogenson had raised and they approved it initially and they reapproved it again.

Now, take a step back and say what is the importance of this with regard to Mr. Chamberlain and his state of mind? So we had that these transactions were initially approved by the chief financial officer and Deloitte and the board if it got to the board. Now it's being investigated under this heightened scrutiny and accounting work that his team has been involved with has been challenged by Mr. Hogenson. And after that challenge, the auditors say all of this accounting is good. That, again, provides comfort to Mr. Chamberlain that he's

performing his job in good faith.

If Deloitte had come back and said: You know what, I agree with Hogenson's questions, I think there's a real issue here and we're not going to recognize revenue on resellers' deals anymore or whatever the other issue might have been, that would have been a very different story and the accounting would have continued very different, but my client, who doesn't have the ability -- and it's not his job to challenge what sales the salesmen and management are making or their strategy, he just does the accounting work -- is comforted that even the work of Dr. Lynch and the strategy that he has envisioned and the sales team is something that is being reviewed and rereviewed. He is acting in good faith.

What's also important here is that we're now operating under double heightened scrutiny because now you have -- there's a -- there's a new partner. Deloitte changes their partners. There's a new partner, an independent -- who -- named Mr. Mercer who's now overseeing the team and they've gone through these deals for several quarters on reseller sales and on hardware sales and they've scrutinized them and they've either approved or disapproved and frankly sometimes they comment and say we're approving this but I don't know if we'll approve it next time because whatever, it's a close call on collectibility or whatever the issue might be. Heightened scrutiny.

And that takes us to the next reseller deal, the second reseller deal that I want to discuss with you. And I want to discuss it because the government raised it in their opening statement and this is a fourth quarter 2010 sale, a large sale to three resellers.

So the background is this: Autonomy had a big customer, Bank of America. They had been selling I think tens of millions of dollars' worth of product to Bank of America over the prior couple of years and they were in a negotiation to sell about $20 million worth of product to Bank of America in December of 2010. That sale didn't conclude by the end of 2010 so the folks involved -- again, at a much different and higher level than Mr. Chamberlain -- decide we want to recognize the revenue in 2010 and there's three resellers who are willing to take on the risk of purchasing this product because they believe it's going to be resold to Bank of America. In fact -- in fact, a deal does end up getting concluded with Bank of America, but it didn't get concluded until a month or so later.

Three different resellers. Why three resellers? Apparently because $20 million is a lot of money and if somebody is going to be on risk, you have three different companies, it's less of a risk to each of those companies; whatever their reasoning is. This is not Mr. Chamberlain who's making these decisions. And there's a complex series of events and then paperwork gets sent over to the finance team to deal

with this and determine whether the deal should be recognized.

And to complicate it even more, there's an amendment. So a deal is concluded on December 31st or so, but in January there's an amendment and the amendment is to add three and a half million dollars to the DiscoverTech portion of that deal, DiscoverTech being one of the resellers that was buying part of it.

Now, this is open and known and it results in what's called a "consolidation adjustment," which is one of these esoteric accounting terms. But what it really means to us is triple heightened scrutiny because when there's a consolidation adjustment there, that's one of those flags and a signal to the auditors to look at it even more extensively and there's lawyers involved in preparing these documents in January relating to a sale that had concluded in December of 2010.

Let me repeat that last part that I said because Mr. Reeves in his opening wants to suggest that my client is impermissibly involved in the backdating of this $3.5 million adjustment.

There are lawyers involved, the people who are doing the contract, such as Joel Scott, his team a guy named Livius Guaio. The lawyers, the guys who provide legal advice, the guys who work on the contracts, they're preparing this documentation. And here's an example of an email from Livius Guaio, one of the lawyers, dealing with this -- dealing with

the preparation of the documentation.

And then the question is: All right. Well, is this concealed from Deloitte? And the prosecutors want you to believe that it was.

And I would suggest to you that the evidence will be very clear that Deloitte knew exactly what's going on because they have what's called "Outstanding items lists" throughout the -- after the end of the quarter. And when you get to January 5th and then January 10th and then January 15th, you know, you're starting at the point where you should have all the documentation.

Here it's not until January 26th that there's signed documentation to Deloitte. And here you see, for example, a January 25th email that is sent by somebody, Antonia Anderson, who at the time was at Deloitte and involves a whole bunch of Deloitte people. And they're talking about this outstanding list -- Can we go through it at some point? -- this is on January 25th. Items are on the list are -- when are we going to get the documentation covering -- they used to call it the B of A deal rather than the reseller deal, which is the way they used to refer to them. And you see a discussion, "This is what we need, supporting documentation for this consolidation adjustment, $3.5 million." And they approve the amendment and you see a back and forth going on within Deloitte.

So here you see, for example, on January 28th, Lee Welham

discussing it. Lee Welham was one of those audit managers in that chart and he's discussing it with a guy four levels above him, the audit partner, Nigel Mercer, and he's saying, "The 3.5 million is the increase in the B of A deal that went through as a consolidation adjustment."

All of this is openly disclosed and is obvious to Deloitte during this period of time, and Deloitte ends up approving the deal despite all of this evidence because they review it and I think if you look at their audit work paper they say, all right, well, there's evidence that there was an agreement reached in December, there was a consolidation adjustment. They looked and they said it's also pretty clear that Bank of America is going to close the deal. In their minds that impacted on the question of collectibility, and they approved of the deal.

So that's evidence that the government didn't tell you. They didn't tell you that there are lawyers involved in this. They didn't tell you about all the back and forth with Deloitte as they're gathering all of this documentation, and they didn't tell you that all of this was done in this period of, like, triple heightened scrutiny, because this is a deal -- it's a lot of money with three different resellers and the like.

And if you take a step back and again ask: How does that play on the mind of my client, this deal, which Deloitte might have decided not to approve but they approved it and they

approved it and Mr. Chamberlain was comforted by the decisions that his boss and Deloitte are making, and there's lawyers involved, that they're saying it's okay.

Let me turn now to hardware and talk a little bit about hardware. I know I've been talking for a while. I know this is not cops-and-robbers-type stuff, and I really greatly appreciate your right trying to stay with me. I'm not going through the 30 deals or anything that are at issue here, but I want to give you a sample because, whether boring or not, this was the life of my client from where he sat in Cambridge, England, and I think it's important to give you a preview of this.

So with regard to hardware, there's a couple of issues that the government's raised, and I'm going to deal with the two primary ones they mentioned impacting my client.

One is -- falls under cost accounting. And by cost accounting, as opposed to revenue accounting, it's are you accounting for the cost of your transaction properly.

So if we go back to my McDonald's example, let's say McDonald's, with their happy meals, gives away a little toy to a little kid in the hope that they can sell another Big Mac. How do you account for the cost of McDonald's in buying those little plastic toys? Well, you could say it's a cost of goods sold and it should be accounted for as a cost of goods sold.

You could also say, well, they're spending this money,

it's a loss, they're not making any money on the toy itself, but it's part of their marketing budget, they're trying to sell more hamburgers; or you could say it should be some of both. And this was the issue that the finance team had to deal with when it came to sales of hardware.

So the first thing to keep in mind is -- as you're judging my client, remember, he works under these principles that are set forth in England called "IFRS," and there's really no guidance at the time that was provided to the accountants for determining whether part of this cost should be under cost of goods sold or part of it should be under sales and marketing.

So the first thing that they do is they say all right, well, what's the purpose? And he can't determine the purpose but management advises of the marketing purpose and the finance team and Deloitte are generally advised that hey, you know, we, Autonomy, have these really big customers, J.P. Morgan, Morgan Stanley, Bank of America, and we're operating in a really competitive marketplace and anything we can do to embed ourselves deeper with these companies, get them more hooked into us and buying from us, it's worth -- it's worth a little marketing work.

They say if we can sell some hardware at a loss, maybe down the road -- as we've now seen -- the world develops and everything is now bundled together. You have software, maybe it gets bundled with hardware, whatever the thinking is of the

strategist. Makes a lot of sense. The rationale for doing so makes sense that some of these costs would be under sales and marketing.

And, in fact, that's what the accounting folks come to a conclusion at Autonomy that we're going to say that some of the costs of the buying of the hardware and reselling at a loss, some of that cost should be attributed to cost of goods sold and some to sales and marketing.

Ultimately, it's the CFO who makes the decision on this. Ultimately, it's the Deloitte accounting firm that reviews it.

Now, Mr. Reeves, in his opening statement, stated, quote, "Defendants came up with a sophisticated way to hide the costs of hardware sales on its balance sheet. Defendants came up with a sophisticated way to hide the costs of hardware sales on its balance sheet."

So let's look at what the evidence shows because if what he's saying is true then what that means is, they hid it from Deloitte. They didn't tell Deloitte that they were going to put some of that cost in sales and marketing, right? If you're hiding it and Deloitte's signing off on financial statements and so forth, that's got to be what's going on.

The problem is the answer is wrong. That's not what was done. It was all openly disclosed to Deloitte. In fact, there were a whole series of conversations at several different times between the Richard Knights, for example, was the audit

partner, the guy at the top of that big chart of all these Deloitte auditors, he's discussing it in this case with the CFO and the CEO and he's saying, you know, there's three potential landing areas here. Remember, no IFRS guidance. We're trying to make a judgment call. We can either say it's cost of goods sold, we can say it's sales and marketing or we can say it's something in the middle. On this occasion they reviewed it and they decided that it should be something in the middle. Should be X percentage to marketing, Y percentage to cost of goods sold.

And actually, six months later, Deloitte came back and said, you know what, we're not going to accept your recommendation and we're going to lower the percentage that goes to sales and marketing and increase cost of goods sold. Not what Autonomy wanted, but that's what they did. They rejected the Autonomy position, and that's where it ended up.

But overall what you'll see is all of the audit work papers relating to these decisions where Deloitte reviews the split of costs and in this case we consider the transaction to be fairly stated.

If we go back to Mr. Reeves' statement, hidden? It's right out there in the open. It's in all of the audit work papers. That's the only place my client comes into play. He's not even involved at the high-level meetings between the audit partner and others, but the work that the finance department is

doing is being sent over to audit -- to the auditors.

So there's a second issue that the prosecutor mentioned in his opening, and it dealt with delivery. And in his opening statement Mr. Reeves referred to deals where there was, quote, pretend delivery. And he said that Mr. Chamberlain was involved in preparing false documents that were presented to Deloitte to fabricate delivery of EMC hardware in the second quarter of 2009.

Ladies and gentlemen, the evidence will show that that statement is not accurate. What the evidence will show is that Steve received, in early July, information that came straight from the customer dealing with delivery. And he didn't edit it or anything, he forwarded it on. So I'm going to race through a few of these, but you'll see emails that are between Cynthia Watkins and the person at Morgan Stanley with this order number, and it all matches up. It gets to Mr. Chamberlain and he forwards it to Lee Welham at Deloitte. The evidence of the delivery to Morgan Stanley.

Now, if they want to challenge whether delivery took place or not, take your best shot, but it had nothing to do with my client. My client is passing on the evidence that he receives.

Moreover, what we see in the record is that as part of this, Deloitte was scrutinizing this transaction and they went to Mr. Hussain because Mr. Hussain was basically indicating that the evidence of delivery is complicated. And you're going

to see evidence of delivery can be complicated. Every day there's new -- there's a million different little invoices for a mouse or a laptop or whatever that's coming in at different times -- and the number changes from day to day based on what's been delivered -- and they wanted as a backstop, the CFO of Autonomy, the decision-maker, to sign what we call a management representation letter, which Mr. Hussain did with respect to this transaction. Deloitte reviewed it and made their determination.

Now, one last point in connection with these deals. I've emphasized to you that I'd like you to pay attention to what my client's role was in this case and the fact that these accounting decisions are made by the CFO and they're going to try to stuff something down my shirt by asking some guy -- so Mr. Chamberlain made this decision? -- because 90 percent of these deals, you know, they aren't really at issue in this case. It's just, you know, paperwork's in, a lot of it's in months ahead of time. I'm talking about these reseller deals and the hardware sales that are at issue in this case.

And you'll see that there were times, in fact, when Mr. Chamberlain even got frustrated by -- by the paperwork that's coming in last minute because a lot of these deals are closed at the end of the quarter. And that's not an indictment of the people who are making the strategy to come up with a sale. It's not an indictment of anybody particularly in the

software business but in a lot of businesses. The end of the quarter is when sales are done.

You know, you hear about how Macy's sells some high percentage of their inventory during the Christmas time period, for example. Well, customers know that they're going to get the best deal near the end of a quarter because companies want to lock in revenue for the quarter, and so they get sales and negotiate and the like, but it does make the job of all the folks sitting in Cambridge, Steve Chamberlain, Lisa Harris, Poppy Prentice, Matt Stephan, the people working with them, exasperated because all of a sudden it's now January 1 and you're getting all of this new documentation you have to deal with for the next several weeks, you got all these auditors in your office; and when it comes to delivery, numbers are changing and when a number changes it's not just that it changes and what's recognized, but it offsets from what is deferred and all of these complicated accounting decisions that make me happy that I never went into accounting. And you see some frustration from time to time.

Here Mr. Chamberlain is noting to his team: I'm sorry, the numbers are coming in; powers greater than me are making these decisions -- "powers greater than me" being the decision-maker, the CFO -- and I understand it's going to be causing you a lot of pain -- because they're working nights and weekends in these first couple of weeks after the end of the

quarter -- and, guys, I recognize it; I'm going to push hard for you to get more bonuses for your hard work and the like. That's where he fits in to this picture.

Now we finally get to what I think is the heart of this case, which is this sale to HP. And you'll recall those first eight bullet points I mentioned to you, one of them was that Steve Chamberlain made no representations to HP; not just no misrepresentations, no representations. Never spoke to them about the sale. He wasn't in on the negotiations. He wasn't even told that the sale occurred until it was agreed to. But the government wants to tag him and bring him into this and there's one little area that they popped something up on the screen during the opening statement, so I'm going to address it, and that had to do with this due diligence period.

So let's try and take ourselves back 13 years, it's July 27th of 2011. Shushovan Hussain says: Hey, Steve, guess what, we're selling the company, blah, blah, blah, blah, for the next couple of weeks there's going to be some due diligence that we're going to be dealing with HP.

And one of the things that happens during this due diligence period is that the CFO, Hussain, asks Mr. Chamberlain for a list of the top 40 customers.

Now, I want you to go back, I'm going to test your memory. What did Mr. Reeves say about this? What he said was that Autonomy and Steve Chamberlain went out of their way to give HP

the wrong answer. Mr. Reeves' words -- I'm going to state them again at closing argument -- "Autonomy and Steve Chamberlain went out of their way to give HP the wrong answer."

Ladies and gentlemen, I don't care how many people they call from HP, you're going to hear a couple people say, yeah, Steve may have been on a call or two. You're not going to hear one of them say that they made a request of Steve Chamberlain for any list of customers.

The evidence is going to be that Mr. Hussain made a request of Steve Chamberlain. And when he requested a list of the top 40 customers, Mr. Chamberlain responded to his boss and he gave a list of the top 40 customers, software, hardware, everything. He responded exactly with what his boss had asked him for. The government neglected to mention that.

Then what happens is Mr. Hussain asks him for another list. He says give me a list of our top software customers.

Now, the government wants to conflate this because it's their argument that Hussain sent to HP only the software company's customers to somehow conceal the hardware customers. It's nonsense. HP had the information. But it had nothing to do with Mr. Chamberlain. He's just responding to another request for his boss.

So the boss comes back, give me the software customers. Not surprising that a hardware company like HP that is now looking to go into the software business might also want a

breakout of who the software big customers are.

Whatever it is, Mr. Chamberlain is not involved. He's just responding to his boss's request. And when he sends him back that list, he makes clear these are software -- these are the software customers, licensed sales and maintenance hosted. That's all software talk. No representations, much less misrepresentations made by my client to HP.

Ladies and gentlemen, proof in a criminal case requires evidence and it requires credible evidence. It requires evidence that would withstand not just the professional skepticism that an auditor might apply to a company, it requires more skepticism than that because people walk into this room innocent -- just as innocent as I am or you are -- unless and until that type of proof is offered. It can't just be assumptions.

It cannot be the case that a prosecutor can come in and talk about something when it's divorced from what my client was responding to. You can't just accept idle statements in a vacuum unless there's real evidence beyond a reasonable doubt.

And this is a unique case also because it's so old. So people are coming into this room in 2024 and talking to you about some meeting or conversation they had on March 18th of 2009. Some of you are 28, 29, 30 years old. What were you doing on March 18th of 2009? Do you remember?

Instead what you're going to see are people who are

programmed and who are reading emails. It sort of becomes trial by email. They don't have the context but they're just reading emails because those are words on paper and it's harder to dispute because you see it visually, but this is what we're dealing with. We're dealing with something that is 15 years old, and these little nuances which can make or break the most important decision that's going to be rendered in my client's life to date, and that's why there's such a high burden of proof.

At the end of the day, I'm confident that you will learn the truth, which is that Steve Chamberlain performed his job in good faith throughout his time at Autonomy. He is an innocent man, not simply somebody who the government is going to fail to prove guilty. He is an innocent man. And I believe that when you hear all of the evidence that's the judgment you will make because that is the only judgment that on the facts of this case the evidence will compel or that justice will allow.
Thank you.

THE COURT: Okay. Ladies and gentlemen. We'll take a recess now, 15 minutes. Remember the admonition given to you. Don't discuss the case, allow anyone to discuss it with you, form or express any opinion. Recess.

(Recess taken at 2:30 p.m.)

(Proceedings resumed at 2:45 p.m.)

THE COURT: Bring in the jury.

(Proceedings heard in the presence of the jury:)

THE COURT: Please be seated. Let the record reflect all jurors are present, parties are present.

You may call your first witness.

MR. LEACH: Thank you, Your Honor.

United States calls Ganesh Vaidyanathan.

THE CLERK: Please raise your right hand.

(Witness sworn.)

THE WITNESS: I do.

THE CLERK: Thank you.

Please state your full name for the record and spell your last name.

THE WITNESS: Ganesh Vaidyanathan, V-A-I-D-Y-A-N-A-T-H-A-N.

GANESH VAIDYANATHAN,

called as a witness for the Plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEACH:

Q. Good afternoon, sir. Where do you work?

A. I work for a company called Cloud Software Group.

Q. What do you do at Cloud Software Group?

A. I'm the chief accounting officer.

Q. The chief accounting officer?

A. That's correct.

Q. Okay. Are you familiar with a company called Autonomy?
A. Yes.
Q. Did you work in the finance department of Autonomy from approximately 2009 to 2012?
A. Yes.
Q. Were you located in the United States or in the United Kingdom?
A. United States.
Q. Okay. Would you tell us a little bit about your educational background, please.
A. I'm a chartered accountant from India, and I worked for about five years with -- five plus years with Pricewaterhouse in India. Post that I worked another five years with KPMG, again in India. And then I also have an ICWA, which is a cost and accountants -- cost and management accountant background, so I have that degree as well.
And then after that I worked for HP in India, again, before I joined a company called Interwoven in the U.S. And after that with Autonomy and then with TIPCO, which then became --
Q. Thank you. Let me try to break that down a little bit, if I could.
You said you're a chartered accountant. What is that?
A. A chartered accountant is a CPA equivalent out of India.
Q. Okay. And so you hold a license in India?

A. Yes.

Q. And you made a reference to something called a CPA. What's that?

A. It's a certified public accountant in the US. I don't hold that degree, but it's an equivalent to it.

Q. And what do you have to do to be a chartered accountant?

A. You've got to -- it's complicated. It's -- you've got to be a graduate and you've got to do -- undergo three years of articleship training and give about 16 exams across a variety of topics from accounting to law to audit to basically earn the degree. And at the time when I passed it was about 1 or 2 of the total candidates appearing for the exam who passed the exam.

Q. Mr. Vaidyanathan, we have a court reporter who's taking down everything we say, and so we need to make sure we're not speaking over each other and we're talking slowly and deliberately so we can have a good record.

A. Okay.

Q. You also said you worked for something or two firms called PWC and KPMG. What are those?

A. PWC is Pricewaterhouse Coopers. They are one of the big four accounting firms, and so is KPMG. They go only by their initials these days. They used to be called differently, now they only use their initials.

Q. Are the other two big four Ernst & Young and Deloitte?

A. That's correct.
Q. And do you remain a chartered accountant today?
A. Yes.
Q. You testified that you worked for HP at some point in time --
A. Yes.
Q. -- before Interwoven?
A. Yes.
Q. Was that roughly in the early 2000 time period?
A. Yes from 2004 to 2006.
Q. And that was in India?
A. That is correct.
Q. And did you join a company called Interwoven in or about 2006?
A. Yes.
Q. What was Interwoven?
A. Interwoven was a web content and document management software company based in the US. It was listed on the NASDAQ at that time and I joined the Indian arm because the -- because I didn't have a work visa to work in the US. Subsequently on obtaining my visa I came back to the US in 2008 and that's when I joined the US accounting team.
Q. So did I hear you immigrated to the United States --
A. Yes.
Q. -- in or about 2008?

A. That is correct.

Q. Okay. And you said Interwoven was in the business of web content management. What types of products did Interwoven have and what did -- what terms did they go by?

A. Yeah. One of the -- they had two major classes of software. One was called TeamSite. TeamSite was the original software product that was used in web content management developing intranets, websites, managing the content on that. That was the purpose of that product.

WorkSite was the other one. WorkSite was document management. It was like Documentum or like Work -- SharePoint, if you will, for Microsoft. That is a compatible product, but it was very similar to that.

Q. And did Interwoven have a product called iManage?

A. Yes, which is the WorkSite product. That is the brand name it went by.

Q. And what did you do for Interwoven in or around the 2008 time period? What was your role?

A. Yeah. I was a corporate accounting manager for Interwoven.

Q. And what did you do as a corporate accounting manager?

A. So I was responsible for the monthly and quarterly close program. I was responsible for the quarterly financial statements, interacting with the auditors, making sure I responded to audit comments, writing memos supporting the

company's position and helping to close the audit as well as quarterly and annual financial statements.

Q. And did I hear you correctly, Interwoven was a public company at the time?

A. Yes.

Q. What does that mean to be a public company?

A. The shares are listed -- of that company would be listed on a stock exchange. In the case of Interwoven it was the NASDAQ, so it's available for trading in the market and others can purchase and buy and sell shares of that company.

Q. In or around 2009 was Interwoven acquired?

A. Yes.

Q. Who was Interwoven acquired by?

A. Autonomy.

Q. And did you go to work for Autonomy at some point after the Interwoven acquisition?

A. Yes.

Q. Okay. And did you continue to work for Autonomy up through the acquisition of Autonomy by HP in or around October of 2011?

A. Yes.

Q. You left HP and when did you leave HP?

A. I left HP somewhere I think it's April 2012.

Q. And today you are the chief accounting officer for Cloud Software Group?

A. Yes.

Q. What are your duties as the chief accounting officer for Cloud Software Group?

A. It's pretty much responsibility -- the responsibility is for the entire accounting function of the group with the exception of taxes and financial planning analysis, pretty much the entire accounting function, whether it's payroll, AP, accounting operations.

(Reporter seeks clarification.)

THE WITNESS: Whether it's accounts payable or accounts receivable or general ledger operations or accounting operations or technical accounting, all that was available.

BY MR. LEACH:

Q. And is Cloud Software Group a public company?

A. No, it is not. It was formed by the combination of TIPCO and Citrix. Citrix was a publicly-traded company until September 2022 until TIPCO acquired Citrix in a transaction.

Q. Do you continue to have engagement with Cloud Software Group's outside auditors in your role as the chief accounting officer?

A. That is correct.

Q. Okay. I want to draw your attention to the time period shortly after Autonomy's acquisition of Interwoven in or around 2009.

In that time period, sir, where were you working? Where,

physically, were you?
A. This was -- timeframe again?
Q. 2009, please.
A. 2009 I was working in the San Jose office, out of the San Jose office.
Q. And what was your title in 2009 after the Autonomy acquisition?
A. It was accounting manager and it was supposed to be controller for Interwoven, but that didn't essentially come through. But eventually, subsequently I got the title of director of accounting.
Q. You subsequently became the director of accounting?
A. Correct.
Q. Okay. And who were some of the individuals you worked with within Interwoven shortly after the Autonomy acquisition?
A. The erstwhile management -- finance management team of Interwoven was more or less retained, so I worked with Brent Hogenson, who was the -- who was the VP of finance for Interwoven, subsequently became the CFO of Americas for the combined Autonomy Group.

And then I worked with Percy Tejada -- he was responsible for revenue for Interwoven, subsequently became the revenue -- responsibility for revenue for the entire Autonomy Group -- and then with Reena and then with Glenn Fong.

Reena was the head of collections for Interwoven,

subsequently ended up heading collections for the Autonomy Group as well as Glenn Fong was responsible for renewals. So these were the key people I worked with, all of them excellent work.

Q. Okay. Let me break that down a little bit. You mentioned someone named Brent Hogenson?

A. Yes.

Q. And he was the CFO of the Americas?

A. Yes.

Q. What did that mean?

A. So he had ultimate responsibility for finance across the Americas for the entire Autonomy Group.

Q. And when you say the "entire Autonomy Group," does that mean more than just Interwoven?

A. Yes. So we had -- we had a few group companies. One was Autonomy, Inc. This was the original company that Autonomy set up when they came into the US, plus there were a few other companies called Verity. That was another acquisition that Autonomy purchased subsequently. There was a company called Zantaz -- Zantaz, Inc. That was based out of Pleasanton here, again, in the Bay Area.

And then there was a company called ETAK that was based out of Texas, if I remember correctly, and those were the primary companies that I'm aware of. There were a few others, but they were -- didn't have too much in terms of financial

assets or liabilities.
Q. You mentioned a company called Verity. That was an acquisition by Autonomy before you arrived?
A. Yeah.
Q. And what was the primary product associated with Verity?
A. It escapes me at this point.
Q. Okay. That's fine.
You are also mentioned a company called Zantaz out of Pleasanton.
A. Yeah.
Q. What was the nature of the Zantaz business?
A. So that was into archiving solutions, so it was archiving and storing emails and other data for key financial statement -- key financial institutions like banks and other such institutions doing compliance as well as other work, so more or less keeping -- call it storage solutions, digital storage solutions for those flag -- industry.
Q. Are you familiar with the term DigitalSafe?
A. Yes. That is a flagship product for Zantaz.
Q. A flagship product for Zantaz?
A. That is correct.
Q. Okay. So when Mr. Hogenson becomes the CFO of Americas in or around this 2009, 2010 time period, he assumed responsibility not just for Interwoven but for these other entities, Autonomy, Inc., Verity, Zantaz?

A. Yes.
Q. Okay. You mentioned someone named Percy Tejada, and Mr. Tejada was in charge of revenue?
A. Yes.
Q. And like Mr. Hogenson after the Interwoven acquisition did that begin to extend to other Autonomy companies like Autonomy, Inc. --
A. Yeah.
Q. -- Verity and Zantaz?
A. Yeah.
Q. Okay.
A. That is correct.
Q. You also mentioned someone named Reena. Is that Reena Prasad?
A. Yes.
Q. Okay. And was she someone you had worked with at Interwoven?
A. Yes.
Q. And she was responsible for collections?
A. Yes.
Q. What does that mean?
A. So collections involves getting the receipt -- getting money from the accounts receivable accounts, if you will, so it involved calling up the customers with respect to invoice copies, asking them for payments, asking them for -- for timely

payments. Sometimes they'll be delayed. Send reminders for payments so on and so forth and my job was to basically collect the cash that was outstanding from the accounts receivable.

Q. After the acquisition of Interwoven in or around 2009, did you become familiar with someone named Steve Chamberlain?

A. Yes.

Q. Who was Mr. Chamberlain?

A. Mr. Chamberlain was the VP of finance at Autonomy based out of the UK.

Q. And how did you interact with Mr. Chamberlain? What was your relationship?

A. Well, Mr. Chamberlain was -- he was a frequent visitor to the US. We used to have conversations pretty regularly. We spoke sometimes on a weekly basis. We traded several emails, so the relationship was pretty -- pretty direct.

Q. Okay. You said Mr. Chamberlain would come to the United States?

A. Yes.

Q. Tell us about that.

A. So every quarter if not more frequently he would come in. This was -- the intent was to basically have a discussion about whatever the operations were in the US and talk about problems if any, issues if any, identify any -- anything that needed to be fixed, so essentially more of an operational sort of trip where he would meet with pretty much most of the stakeholders,

whether it's finance, whether it was sales and others, he would meet with most stakeholders; more of a trip that was undertaken to understand the operations of the US.

Q. And this is would happen three or four times a year, in-person meetings --

A. Yes.

Q. -- with Mr. Chamberlain?

A. Yes.

Q. Here in the United States?

A. That is correct.

Q. Okay. And did you -- I think I heard you say you had phone and email interactions with Mr. Chamberlain?

A. Yes.

Q. Was that on a regular basis?

A. Yes.

Q. And did that continue all the way up through 2011?

A. Yes.

Q. Are you familiar with the name Shushovan Hussain?

A. Yes.

Q. Who is Mr. Hussain?

A. Mr. Hussain was the CFO for Autonomy on a worldwide basis, so he is also based out of the UK and, you know, he would visit the US too from time to time. I met him I think at least twice in the US.

Q. How regularly would Mr. Hussain come to the United States?

A. I thought he was here at least every quarter, but I could be wrong on that. I have seen him personally at least twice in the US.

Q. And do you know the name Michael Lynch?

A. Yes.

Q. Who is Dr. Lynch?

A. Dr. Lynch was the CFO -- CEO, sorry, of Autonomy and he was based in the UK.

Q. And was your interaction with Dr. Lynch significantly more limited than your interactions with Mr. Chamber?

A. Absolutely.

Q. I want to draw your attention, Mr. Vaidyanathan, to the time period the first quarter of 2010 so roughly a year after the acquisition of Interwoven and if you could give us please a high sense of what you were doing in your role as director of accounting in that time period?

A. Yeah. So one of the things that we had -- we as in as a group working with Brent who had wanted to do was looking at the financial statements of each and every entity that we had recently inherited, and the intent was to basically come up with a list of accounting issues with a list of items that we could raise to Steve and the rest of the team in the UK with an intent of trying to make sure that we address those issues because we knew that Autonomy was listed in the UK and the intent was to make sure we address all the issues as quickly as

we possibly can with an intent to sort of solve it before it became an issue -- bigger issue in the future.

Q. Why did you want to come up with a list of accounting issues? Explain that.

A. So typically when you take over a company and you start looking at financial statements of that company the first -- at least the first statement of affairs and the first thing you should do is basically go back and looking at the various financial statement captions one by one with a view of understanding them as to what is the frequency, is there anything special about them, should we take more -- more care or less care on certain financial statement components as the need may be. So that was Intent No. 1.

Intent No. 2 was to basically see if there was anything that was causing a problem whether with -- that might affect the financial statements of the company as a whole from -- that existed in the financial statements at that point in time, so with an idea of fixing it.

And the third was to look at the financial statements as a whole trying to see if there's anything else that are not issues currently but would become issues in the future and so you would basically go back and study and ferret out those issues as well so you have a laundry list of issues to basically focus on. That way you drive the business of the company as well as keeping financial discipline.

So that was the three-prong sort of approach that we took in order to -- and this is what I think anybody would do to -- in order to stop afresh at any company.

Q. And when you say "start afresh," you were very familiar with Interwoven, and so you're looking at Zantaz and Verity and Autonomy, Inc., and the other Autonomy companies that you had no irresponsible for before?

A. That's correct.

Q. Okay. And generating this list of accounting issues, that was your goal?

A. That was my goal; that was Brent's goal. He had asked all of us to basically go back and look at issues because we brought up issues one-by-one when we started getting some of these financial captions, and so he basically told us to say okay, you know what, I can't handle all these issues one-by-one, why don't you go back, look at your individual areas, come back with a list and then I incorporated them into a master list and we discussed that with the UK.

Q. When did this effort to generate a list of accounting issues begin?

A. We started -- I think the timeline is a little hazy right now, but I think the moment we got the responsibility of the entire group I think it was somewhere in the March timeframe of 2010 -- I could be wrong there, but generally around that time period is when we started. And the idea was by the time, you

know, Steve comes in on his next visit, we present him with a -- with a laundry list of items that we have either fixed, we are going to fix or we think are potential issues that we need to solve.

Q. I'm going to come back to this list of accounting issues, but I'd like to first direct your attention to some documents from the March and April or the April time period of 2010. And if we could draw the witness's attention to what we've marked as Exhibit 3308.

THE COURT: 3308 admitted.

(Trial Exhibit 3308 received in evidence)

BY MR. LEACH:

Q. Mr. Vaidyanathan, we've placed before you Exhibit 3308.

MR. LEACH: And, if we could, just briefly zoom into the top portion of the email on the first page.

BY MR. LEACH:

Q. There's an email titled "Credit hunt," and it's from Shushovan Hussain to Steve Chamberlain and Brent Hogenson. Do you see that?

A. Yes.

Q. Were you familiar with this term "Credit hunt"?

A. Yes. It was a -- it was a quarterly sort of a duty that we did to basically go back and look at the financial statements to make sure whether -- if we had any credits -- accruals on the balance sheet that we could potentially release

if they were no longer needed.

Q. Let me ask a slightly different question. Were you familiar with this term "Credit hunt" before your days at Autonomy?

A. No.

Q. And how did that term strike you, was there anything unusual about it?

A. Yeah. Typically one would basically look at both sides of the balance sheet. One would look at the assets side of the balance sheet to see if there are any assets that no longer require -- are no longer required, should be written off or provided for that side.

Similarly you'd look at the liability side too. So under normal circumstances you would refer to that as a balance sheet cleanup. You would not refer to that as a credit hunt.

Q. How do you distinguish this balance sheet cleanup from the credit hunt you were asked to do at Autonomy? Help me understand that.

A. So typically when you look at the balance sheet you have the asset side as well as the liability side. And on the asset side, you would potentially look at the assets and say, hey, is there a -- is there a particular asset that does not -- is not -- is not appearing at its rightful value? So you would take a provision on that -- on that particular asset. So that would be a negative to the P&L.

Similarly, you would look at any sort of AR that requires provisioning. If it's not collectible, then potentially you would reserve for that AR and things of that nature. So you'd look at that. That would be on the asset side.

And on the liability side what you would do is you would do something very similar. You would look at all the accruals you had made previously, whether those were for the right number or whether those have already been paid so they are no longer required, they need to be divest. So you would do both and you would not just do one.

Q. You've used some accounting terms, sir, that I just want to make sure we're all on the same page for.

AR, is that accounts receivable?

A. Yes.

Q. And what is that?

A. Accounts receivable refers to the sum that is paid -- payable by the customers when you invoice them for goods and services that are deliverable to them.

Q. And you used the term "accrual." What does that mean?

A. Accrual refers to the act of booking an expense for a particular service or goods that have been received for which the renderer hasn't sent you invoices yet.

Q. And you testified that this credit hunt that you were asked to participate in was focused on credits on the balance sheet and not another portion of the balance sheet?

A. Yes.

Q. Was that unusual to you?

A. Well, typically you would not see it referred to that way. You would see it referred to as a balance sheet cleanup. So what we would have normally done is you would say, hey, here are the assets that you need to write off or provide for, here is the accruals that you need to kind of sort of release and you would net the two or put them in their respective geographies where they belong to, and that's what you would do, just looking for one side of the balance sheet was all.

Q. Did this credit hunt that Mr. Hussain asked you to participate in seem unduly focused on one particular area?

A. Yeah. It appeared to be focused only on the liability side of the balance sheet, not on the asset side.

Q. And was that common, in your experience, at other public companies?

A. No. Typically you would not be asked to -- looking at -- you would not be asked to look at one side of the balance sheet. You would be asked to look at the financial statements as a whole.

Q. Did it feel like Autonomy was only looking for the good things and not the bad things?

A. It felt like that.

Q. Thank you.

Let me now direct your attention to Exhibit 3307.

THE COURT: 3307 admitted.

(Trial Exhibit 3307 received in evidence)

MR. LEACH: Thank you, Your Honor.

And this is another -- if we could zoom into the top, Mr. Hasan.

BY MR. LEACH:

Q. The subject of this email, Mr. Vaidyanathan, is "Need savings." Do you see that?

A. Yes.

Q. And it's from someone named Cynthia Watkins. Who is Cynthia Watkins?

A. Cynthia Watkins was the controller at Autonomy, Inc.

Q. Okay. And was she somebody you had worked with at Interwoven?

A. No. She was a peer.

Q. A peer who had come from the -- from Autonomy before you arrived?

A. That's correct.

Q. Okay. And this time period, April 11th, 2010, is that time meaningful for your work in connection with the financial statements of Autonomy?

A. Yes, because I -- that was the time maybe I had started to look for the -- we had resumed group responsibilities I think and then that's when we were starting to look at documents for the rest of the group companies and starting to sort of iron

out our areas overall.

MR. LEACH: Thank you. And last document in this chain if we could please look at Exhibit 3308 just for the witness only.

THE COURT: Sorry, which one?

MR. LEACH: 3308.

THE COURT: That's in already.

MR. LEACH: Oh, I'm sorry.

THE COURT: 3308, 3307.

MR. LEACH: Yes. Thank you, Your Honor. Thank you.

BY MR. LEACH:

Q. Let me move forward in time, Mr. Vaidyanathan, to the second quarter of 2010 and ask you some questions about a company called MicroLink. Are you familiar with a company called MicroLink?

A. Yes.

Q. What was MicroLink?

A. MicroLink was a distributor for Autonomy products, and it had extensive dealings with Autonomy at that point in time.

Q. Was this a company you were familiar with before you got to Autonomy?

A. No.

Q. And when you say a distributor, were they a reseller?

A. Yes.

Q. Okay. And what is a reseller?

A. A reseller is a person who basically doesn't -- who basically takes somebody else's product and resells it to the end customer.

Q. And how did you learn about MicroLink?

A. MicroLink was one of the -- I mean, we had been told that they were a reseller of Autonomy products, so that was one.

The second was they had receivables in the financial statements that were due, so that was obviously another area that I knew about them.

And the third was they typically would have dealings with Autonomy to its last week of the quarter, which is what most typical software companies would have at that point in time. Your last -- last week of the quarter is your heaviest, so they would have last of dealings with Autonomy at that point in time.

Q. When you say MicroLink had receivables, were those receivables owed to Autonomy?

A. Yes, that is correct.

Q. Okay. And in or around this time period, the second quarter of 2010, did you learn that MicroLink owed a significant amount of money to Autonomy?

A. Yes.

Q. And did you also learn that Autonomy had acquired MicroLink for approximately $55 million?

A. Yes.

Q. Okay. Let me draw your attention -- and was part -- strike that.

Was part your responsibilities as director of accounting to essentially bring MicroLink's books into Autonomy Inc.'s books?

A. Yes.

Q. Let me draw your attention to Exhibit 816.

THE COURT: 816 admitted.

(Trial Exhibit 816 received in evidence)

MR. LEACH: And you can display that, Mr. Hasan.

If we could initially zoom into the top portion of this, please, Mr. Hasan.

BY MR. LEACH:

Q. This appears to be an email dated May 18th, 2010, from Lisa Harris to you and someone named Ken Wong. Who is Ms. Harris?

A. Ms. Harris was the -- I'm forgetting her title, but she was the group chief accountant based out of the UK for Autonomy.

Q. Where was she based?

A. In the UK.

Q. Okay. And in the CC line there's someone named Alan Rizek and Poppy Prentice. Who are they?

A. Poppy Prentice was based out of the UK as well. She worked with Lisa and the UK team, UK accounting team. Alan

was -- if I remember correctly, he was the controller for MicroLink.

Q. There's a subject line "AR posting in Autonomy, Inc. books." Do you see that?

A. Yes.

Q. Okay. Is this email part of the effort to bring MicroLink's books into Autonomy's books after the acquisition?

A. Yes.

MR. LEACH: If we could scroll down, please, Mr. Hasan, and zoom in -- oh, no, no, no. Same page, please, page 1, and zoom in on the first -- the "Hi gentlemen" and all the way down to the third line.

That will do. Thank you.

BY MR. LEACH:

Q. Ms. Harris is writing "Hi, gentlemen. I need you to post dummy cash as per the attached in Autonomy Inc.'s AR - the other side of the entry needs to go to Inc.'s interco with NA Holdings."

There's some accounting terminology here Mr. Vaidyanathan that I want to make sure we understand. What is -- AR is accounts receivable; is that what you understood?

A. That's correct.

Q. "Inc.'s interco," is that a reference to Autonomy Inc.'s intercompany accounts?

A. That's correct.

Q. And NA Holdings, what's that?

A. That's the holding company in the UK. That was probably that intercompany there.

Q. And Ms. Harris wrote to you "I need to you post dummy cash as per the attached." What is dummy cash?

A. Well, the idea was to basically -- when you consolidate two entities together, you typically eliminate, you know, assets and liabilities as well as the receivables, payables, you also eliminate costs and revenues, so that is part of the consolidation process. The idea is not to enrich yourself at the expense of yourself, right?

So in this particular scenario it appeared to me at that point in time that there was some receivable transaction, obviously MicroLink owed Autonomy, Inc. There was some adjustment that needed to be done at holding-company level, and so we were offsetting the AR to -- and moving the AR to intercompany at the holding-company level.

Q. Was this essentially an effort to write off the debts that MicroLink owed to Autonomy?

A. That's what it seemed. It appeared as though that they had some other sort of detail probably at a holding level, which it was going to be offset with. Typically you would not see this, but that's what it appeared to me at least.

Q. What do you mean typically you would not see this?

A. So typically you would have AR, you would have -- you

would have AR on one side. One side owes the other, so from one side you will have accounts receivable, on the other side you will have accounts payable and those will be knocked off in the region in which they are currently existing.

It appeared to me that this was going through the holding company, so -- and they were doing consolidations there, so the idea was maybe they could gain offset there. Typically you would see it at the US level, but since the consolidation was being done at the "whole core" level, I thought they were trying to do it at that level there. That's why it was moving through intercompany.

So typically you would offset AR as well as AP, you would not move it through intercompany.

(Reporter seeks clarification.)

THE WITNESS: You would not offset it. You would offset it in the US, you would offset the AR with the AP. You would not move it through intercompany.

BY MR. LEACH:

Q. Was this concerning to you?

A. It was interesting because I did not -- the -- because I was not aware of the consolidation that was going on in the -- in the UK, so it was hard to guess.

This is not the way we would do it normally. This is not the way I have seen it done normally, but --

MR. LEACH: Let me look -- if we could look at the

attachment, please, Mr. Hasan, the Excel file that's attached. And if we could look -- zoom in on the top left portion, maybe the first four or five rows. That's good.

BY MR. LEACH:

Q. There's a heading or there's some numbers at the top in column K and column L. Do you see that --

A. Yes.

Q. -- sir?

The 24,717,000 -- the $24 million number, what is that and what is the $15 million number in parentheses?

A. So the 24 million -- again, I'm going off memory -- it appears that the 24 million number is the total of the entire receivable from MicroLink that has individual sort of customer names and user names, if you will, associated with that and then this entry was clearing off a portion of that -- of that number. That's the 15 million. That's the dummy cash entry that you see in column M.

Q. So at this time period MicroLink owed $24 million to Autonomy, and Autonomy is writing off approximately $16 million. Is that what it appears to you?

A. Yes. Yes.

Q. Okay. There's a line with -- or a column with the headings "Cust, Cust Name, Sales Rep, VAR name." Do you see that?

A. Yes.

Q. The customer name, so MicroLink is the customer to Autonomy; am I reading that correctly?
A. Yes.
Q. And if there's a VAR name, that is essentially the company MicroLink is purporting to sell Autonomy software to?
A. Yeah. That would be the end-user.
Q. Okay. And so for row 5 it lists MicroLink. Does that indicate to you that MicroLink is the end user for that amount?
A. Yes.
Q. Okay. And that amount is approximately $6.875 million?
A. Correct.
Q. And so in row 6, there's a VAR named U.S. Air Force. Do you see that?
A. Yes.
Q. And further to the right there's post dummy cash of $410,000?
A. Yes.
Q. Is that essentially a direction to write off that amount on Autonomy's books?
A. Yes.
Q. Let me go back to -- you testified earlier about a list of accounting issues that you --
MR. LEACH: You can take this down, Mr. Hasan. Thank you.
\\\

BY MR. LEACH:

Q. -- that you were working on with Mr. Hogenson and other part of your team.

Let me first direct your attention to Exhibit 3314.

THE COURT: 3314 admitted.

(Trial Exhibit 3314 received in evidence)

BY MR. LEACH:

Q. Do you recognize this, Mr. Vaidyanathan?

A. Yes, I do.

Q. What is this?

A. So this was a list of issues that I sent over to Brent back in the day. These were issues that we had determined based on our review of the financial statements at that point in time.

MR. LEACH: And if we could zoom in, Mr. Hasan, to the first half of the document.

BY MR. LEACH:

Q. Do you see the date of May 26, 2010?

A. Yes.

Q. Okay. And you wrote "Per your request, here's the summary of the various payroll issues that we found on the Autonomy payroll since we transmitted [sic] the payroll from Lourdes to Kerrie on May 3rd, 2010." Do you see that?

A. Yes.

Q. And these payroll issues that you're identifying, did

those relate to Interwoven or did they relate to other Autonomy companies that Autonomy had well before the Interwoven acquisition?

A. They were relating to Autonomy companies prior to the acquisition.

Q. Okay. So these were issues that were new to you --

A. Yes.

Q. -- during this time period?

And you're escalating these to Mr. Hogenson with the intent of bringing them to the UK's attention in a package of accounting issues?

A. Correct. One was to basically summarize all these issues and address them to the extent they can, and the other one was to escalate them to the UK.

MR. LEACH: Let's go to 3315.

THE COURT: 3315 is admitted.

(Trial Exhibit 3315 received in evidence)

MR. LEACH: And if we could zoom into the top Mr. Hasan.

BY MR. LEACH:

Q. Mr. Vaidyanathan, do you see does this appear to be an email from you to Mr. Hogenson on June 7th, 2010?

A. Yes.

Q. And the subject is "Issues list." What does that refer to?

A. So this is the issues list for previous other issues that we had discovered on the or after we assumed responsibility for the rest of the group companies in Autonomy. This is -- this included even the payroll ones, but this was a comprehensive list.

MR. LEACH: And if we could draw your attention, please, to the attachment, Mr. Hasan -- or, I'm sorry, I think it's page 3 of the exhibit.

And if we could go to the bottom of page 3, please. Strike that. The bottom of page 5, please.

BY MR. LEACH:

Q. Do you see the heading "Capitalized Software," Mr. Vaidyanathan?

A. Yes.

Q. And this says -- and is this kind of the format of how you categorized the issues, you would have a description, a category like accounting you would put them in, an action item and then dates and whether or not the issue was open?

A. Yes. I mean the -- the intent there was to -- and this was somewhere in June. The intent was to basically get it right for the quarter. If there are certain items required more work, then you potentially do more work in June and after the quarter end you would try and get it -- get it sorted out, but the intent was to get it done right for the right -- for that quarter, that's correct.

Q. Okay.

And here you're talking about "Term licenses we have purchased from Filetek, a reseller." Do you see that?

A. Yes.

Q. Were you familiar with Filetek before your days at Autonomy?

A. No.

Q. And what were you learning about Filetek in this time period and why did you include it in this issues list?

A. So one of the -- well, Filetek was a reseller of Autonomy products as well as we bought software from Filetek or at least it appeared to be.

The intent there is -- from an accounting standpoint you typically look at whether the software is being used for a particular purpose, what's the intent of the software, does the software do certain specific things, is it important from a long-term standpoint. Based on that you determine useful life, based on that you would figure out how to amortize or expense the -- expense the item.

In -- when I -- on this specific topic, the license's nature was not very clear from when I spoke with the accounting team or I spoke with the IT team, they were not very clear about what those licenses were -- licenses were and what they were being used for, so that basically -- if that is not very clear then there's a problem in terms of the accounting, and I

don't know whether the accounting needed to be addressed or changed or things of that nature.

The second problem with that thing was the coding of the expense. So depending on the nature of the item, the expense would be coded to the various financial statement captions whether it is cost of goods sold or it is research and development or sales and marketing, for that matter.

So here because the nature of the software that was bought wasn't very clear, it was very difficult to understand whether if we booked to a particular section of the income statement or another section of the income statement. So there were two issues intertwined to one.

Q. You mentioned that Filetek was a reseller. Why did that play into your thought process about this software purchase?

A. So typically when you have sales to a party and you purchase from that party, both those contracts need to be evaluated to determine linkage.

So typically what would you do is you would evaluate and see whether those two contracts were interlinked by any sort of imagination or not, whether they serve the same purpose, whether it was those two needed to be offset, they needed to be -- were they different purchases, were they different things, you know, altogether, and should they be accounted for differently vis-á-vis accounted for the way they were being accounted for.

So that is why I wrote what I wrote because typically the moment you have transactions with customers, they needed to be evaluated for linkage. And based on that, that would drive the accounting.

Q. And at this period, May of 2010, were you -- did you have concerns or questions in your mind about whether sales to Filetek were linked to purchases from Filetek?

A. Yes, because I was hearing from Percy as well on the accounting side.

MR. HEBERLIG: Objection. Objection, hearsay.

THE COURT: I think he's asking whether he would be concerned. Overruled.

THE WITNESS: So I was hearing from Percy as well because he saw this on the revenue side and I was seeing it from the purchasing side, and so we were trying to see whether they had been evaluated for linkage and they were accounted for in the right manner or not, and so it was -- that is why I was starting to get a little concerned.

BY MR. LEACH:

Q. And was there anything about the amount of the software purchase that raised questions in your mind?

A. Yes.

Q. How so?

A. So typically a software company for the size of the company that was Autonomy back then purchasing software at such

large quantities from parties that weren't necessarily known to sell software was an oddity, in my mind at least. And so my thought processes there was, okay, this is a company we have not heard of before, probably sells -- it sells purportedly some software that is used for archiving purposes, but the IT department that was using it and the data center department that was using it wasn't very clear about its usage.

Typically if you have software that is purchased at such high value, everybody would be all over it, and so that was, in my opinion, a question that needed to be asked and addressed.

Q. Did you undertake some type of effort to see how significantly Filetek software was being used within Autonomy in the US?

A. Yes. So once this was -- I don't know whether it was in connection with this or something else or another transaction on Filetek, but I did -- I did go back and ask the CEO of one of the -- of the business units called Zantaz. So this was supposed to be a software that was important for data archival solutions, and so I went and asked the CEO of that unit, if you will, the business unit head whether he was aware of that transaction. He wasn't very aware of that transaction at all, and so he referred me to somebody else. I went and checked with that person. He also said he knew something peripherally. It didn't come across as though they knew exactly what the software was, where it was housed, what was being hosted and so

on.

Q. Did this inquiry give you comfort that Filetek software was actually being used?

A. It raised a bunch of flags in my mind because if you're buying software at that level and people don't know about it, then it's kind of a red flag right there.

Q. With respect to the list of accounting issues that you and Mr. Hogenson and others were -- were preparing, did you also learn about sales to other value-added resellers?

A. Yes. There was -- there was a few of them. There was Filetek, there was one called -- there was Capax, there was another one called I think DiscoverTech, there was another one called VMS. Those are all the ones that I -- off the top of my head I can think of.

Q. Okay. And why were you -- why did you have questions about those firms? What was troubling you?

A. Two or three things. One was the number of transactions with those parties. So typically that alone, by itself, would not be a significant cause of concern, but the very fact that, you know, you're having really large volume of -- in terms of value of software that is being resold by those parties.

Secondly, they would show up towards the very end of the quarter and sometimes without end-user names. That, to me, was more concerning.

So typically in other companies that I'd been a part of

you would always when you sold to resellers the intent was to always have the name an end user so you know that you're selling to an established third-party and that the accounting transaction is valid.

In some cases here we would not be aware of the end user third-party at all because it used to be pretty much at the very end of the quarter, so it's very hard to tell and we won't have an end user name on those transactions.

So A, these resellers are not something that are well known. Most of the resellers that are large enough to do such transactions would be of the -- you know, you have, quote, multiple reseller -- resellers in the US that are large. You have CDW, for example, you have a few others that have large transactions and they're capable of doing multibillion -- multimillion dollar transactions through their -- through their portals.

These names were not something that I'd heard of before, so that also added to the --

Q. Did you also have concerns that Autonomy was purchasing product from some of the resellers as a means to pay down its debts?

A. The Filetek one was a one that I was previously aware of. There was a couple of others. VMS was another one that I subsequently got to know. Around this time when I wrote this email I wasn't aware of VMS because I don't think that

transaction had occurred at that point in time, that occurred later. So Filetek for certain and there were a few others as well that we had purchased software from in addition to just Filetek.

Q. And in or around June of 2010, did you meet with Mr. Chamberlain about some of the concerns that you and Mr. Hogenson were developing?

A. Yes.

Q. Tell us what happened, please.

A. So we -- this entire list I sat down and discussed with Steve. This was somewhere in San Jose in the San Jose office of Interwoven and we talked about this. We went through every issue that I had raised here. We discussed it at length and, you know, Steve was surprised about the number of issues and the depth to which we had gone and get those -- got those issues surfaced, so he was all very happy with the amount of work we had done, and he was commending us for doing the amount of work and diligence that we had done at that point in time.

Q. He was commending you at that point in time?

A. Yes.

Q. Okay. And how did this meeting with Mr. Chamberlain end?

A. Oh, he said he's going to basically go back and make sure that most of these are addressed one way or the other. We were supposed to go back and provide information, additional information. He would go back and look at other information,

if any, that was available outside of the -- at the HQ level, if any, and we would all come up with a way of accounting for these transactions in the right manner.

Q. And at some point in time had you learned that Brent Hogenson had also elevated some of these issues to Dr. Lynch?

A. I knew he was elevating the concerns to management. I knew he was elevating the concerns to Shushovan and Dr. Lynch. I didn't know when he did it, I didn't know how he did it, but he was going to.

The entire intent was to basically raise this to management team in the UK.

Q. And shortly after raising these issues was Mr. Hogenson fired?

A. Yes, he was fired. I didn't know -- I don't know the timeframe because I didn't know exactly when he raised those issues, but he was fired a month or so after our discussions initially.

MR. LEACH: Your Honor?

THE COURT: Okay. Ladies and gentlemen, we're going take our recess for the evening. Remember the admonition given to you. Don't discuss the case, allow anyone to discuss it with you, form or express any opinion.

We'll start at 9:15 tomorrow. Thank you very much.

And you can step down.

(Jury retires at 3:45 p.m.)

(Proceedings were heard outside the presence of the jury:)

THE COURT: Okay. Let the record reflect that the jury and alternates have retired.

So I think that you were furnished -- at least I hope so -- a copy of the communication that the Court received from the alternate, Mr. Dang. Did you -- did you see that or not? Have you not seen it?

MR. LEACH: We have, Your Honor.

MR. MORVILLO: I have seen it, Your Honor. I'm not sure about Mr. Lincenberg.

THE COURT: So in it -- well, the letter itself is explanatory. And also attached to it is proof of ownership of shares in a mutual fund of Hewlett Packard. I think it's -- it's in there.

So what is it -- what -- first let me talk to the defense. What do you want to do?

MR. HEBERLIG: Get rid of him.

THE COURT: You want to excuse him?

MR. MORVILLO: We do, Your Honor.

MR. HEBERLIG: If he ever becomes a juror and he's Alternate No. 1, he's nothing but trouble.

THE COURT: Do you have any objection?

MR. LEACH: We have no objection to excusing Alternate No. 1. I would say it's more based on the second part raised

in this letter, the conflicts that are emerging.

THE COURT: Yeah. Well, it's like I didn't do it but if I did it, I was sleep; but if I was sleep, I was intoxicated; and if I was intoxicated, I drove past the limit; and if so, I've committed a crime, but the statute's run, never the -- I mean, it was just an ongoing series of why he doesn't want to serve.

MR. LEACH: It's obvious he does not want to serve.

THE COURT: Yeah. I don't know. I think -- you know, it's the first day. I just don't know if I have to admonish him at all. I just wanted assurance that no one's going to reach out to him. I wouldn't assume anybody would reach out to him. I mean, it's like how did I do in my opening? What's the difference?

Okay. I will excuse him.

Let me just call your attention to one other matter which was brought to my attention is that Juror No. 12, Mr. Ricci Jack, R-I-C-C-I, is an acquaintance of my law clerk, an acquaintance that -- it's a friend of hers. He is a friend of a friend of my law clerk's. They have met on two occasions in a large group, the last time being October, and she assures me that she's never even vaguely mentioned this case or any other case, and there's no ongoing situation, so I simply wanted to point that out to the parties just because it's my job to point things out to the parties.

Okay. So tomorrow we will start at 9:15. Thank you very much.

MR. LEACH: Thank you, Your Honor.

THE COURT: I thought the openings were really interesting. So if that's the measure -- I don't know that that is the measure, but it's -- the parties all did an excellent job and thank you very much.

And I know, you know, I'm admitting these documents, I'm not listening to a lot of objections. It's just my feeling in a matter with really sophisticated words that so much can be dealt with on cross, you know? So many things can be put in context. That's not true about everything, I got that, but this is a long trial and we just don't want to get bogged down to the extent we don't have to with colloquy with the Court, me getting into it -- which is never a good thing -- and/or the lawyers going back and forth, so I just put that out as a general observation. I want to thank the parties for being so prompt and responsive. Good night. I'll see you tomorrow.

MR. LEACH: Thank you, Your Honor.

(Adjourned at 3:49 p.m.)

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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

RHONDA AQUILINA, RMR, CRR
Official Court Reporter
CA CSR# 9956

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DATED: MARCH 18, 2024